No. 15432

United States
Court of Appeals
for the Ninth Circuit

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

MILDRED IRENE SIEGEL, Respondent.

Transcript of Record

Petition to Review a Decision of The Tax Court of the United States

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif. —4-10-57

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Transcript of Proceedings—(Continued):

CHARLES K. RICE,

Assistant Attorney General,

LEE A. JACKSON,

Attorney,

Justice Department,
Washington 25, D. C.

Attorneys for Petitioner.

DANA LATHAM,

A. R. KIMBROUGH,

GROVER R. HEYLER,

830 Statler Center,
900 Wilshire Blvd.,
Los Angeles 17, California,

Attorneys for Respondent.

The Tax Court of the United States

Docket No. 52700

MILDRED IRENE SIEGEL, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Appearances:

For Petitioner:
A. R. Kimbrough, Esq., Austin H. Peck, Jr., Esq., Henry C. Diehl, Esq., Dana Latham, Esq., Grover R. Heyler, Esq.

For Respondent:
John J. Burke, Esq.

DOCKET ENTRIES

1954

Apr. 29—Petition received and filed. Taxpayer notified. Fee paid.

Apr. 29—Copy of petition served on General Counsel.

Apr. 29—Request for Circuit hearing in Los Angeles filed by taxpayer. 5/5/54—Granted.

Jun. 22—Answer filed by General Counsel.

Jun. 22—Request for hearing in Los Angeles, Calif., filed by General Counsel.

Jun. 23—Copy of answer and request served on taxpayer, Los Angeles, Calif.

1955

Mar. 25—Hearing set July 5, 1955, Los Angeles, Calif.

1955

Apr. 6—Entry of appearance of Dana Latham and Grover R. Heyler, as counsel, filed.

Apr. 18—Notice of change of hearing date to June 20, 1955, Los Angeles, Calif.

Jun. 20—Hearing had before Judge Black on the merits, Stipulation of Facts and Exhibit 1-A. Briefs due 9/1/55; Replies due 9/30/55.

July 13—Transcript of Hearing 6/20/55 filed.

Aug. 30—Motion for extension to Sept. 15, 1955 to file brief filed by General Counsel, 8/31/55 —Granted.

Sept. 1—Brief filed by taxpayer.

Sept. 13—Motion for extension to 10/6/55 to file brief, filed by General Counsel. 9/14/55—Granted.

Oct. 4—Motion for extension to 10/27/55 to file brief, filed by General Counsel. 10/5/55—Granted.

Oct. 28—Motion for extension to 11/3/55 to file brief, filed by General Counsel. 10/31/55 Granted.

Nov. 3—Brief filed by Respondent. Served 11/4/-55.

Nov. 4—Copy of brief served on Respondent.

Dec. 2—Reply Brief filed by taxpayer. 12/5/55 Copy served.

Dec. 5—Motion for extension to Dec. 17, 1955 to file reply brief filed by Respondent. 12/6/55—Granted.

1955

Dec. 16—Motion for extension to Dec. 31, 1955 to file reply brief filed by Respondent. 12/21/55—Granted.

1956

Jan. 3—Motion for extension of time to 1/14/56 to file reply brief, filed by Respondent. 1/4/56—Granted.

Jan. 16—Reply Brief filed by Respondent. Served 1/17/56.

Jun. 29—Findings of Fact and Opinion filed. Judge Black. Decision will be entered under Rule 50. Served 6/29/56.

Oct. 2—Agreed computation filed.

Oct. 3—Decision entered, Judge Black. Served 10/4/56.

Dec. 20—Petition for Review by U. S. Court of Appeals for the Ninth Circuit filed by Respondent.

1957

Jan. 3—Proof of Service filed (Counsel).

Jan. 3—Proof of Service filed (Taxpayer).

Jan. 15—Motion for extension of time for filing record on review and docketing petition for review to Mar. 20, 1957 filed by Respondent.

Jan. 16—Order extending time for filing record on review and docketing petition for review to March 20, 1957, entered.

Jan. 17—Order served.

Jan. 23—Designation of contents of record on review, with proof of service thereon filed.

1957

Jan. 23—Statement of Points with Proof of Service thereon, filed.

[Title of Tax Court and Cause.]

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency A:R:90D:SWP dated February 8, 1954, and as a basis of her proceeding alleges as follows:

I.

Petitioner is an individual residing at 406 South June Street, Los Angeles, California. Petitioner's gift tax return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California, at Los Angeles.

II.

The notice of deficiency, a copy of which is attached hereto and marked Exhibit "A", was mailed to petitioner on February 8, 1954.

III.

The taxes in controversy are gift taxes for the calendar year 1950 in the amount of $51,144.24. The entire amount of said deficiency is in dispute.

IV.

The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) Respondent erred in determining that peti-

tioner is liable for deficiency in gift tax of $51,-144.24, or in any amount for the calendar year 1950.

(b) Respondent erred in determining that petitioner made a completed or irrevocable transfer of property by gift during said calendar year.

(c) Respondent erred in determining that petitioner, during said calendar year, transferred to her son by gift a remainder interest in all or any part of her one-half interest in the community property of herself and her deceased husband.

(d) Respondent erred in determining the value of petitioner's said one-half interest in said community property, and in determining the value of said remainder interest.

(e) Respondent erred in failing to determine that the value of the life estate which petitioner obtained in her deceased husband's one-half interest in said community property constituted consideration in money or money's worth for any said transfer.

(f) Respondent erred in failing to determine that all bequests which petitioner became entitled to and obtained under the provisions of the last Will of said decedent constituted consideration in money or money's worth for any said transfer.

(g) Respondent erred in determining that no exclusion was allowable within the meaning of Section 1003(b)(3) of the Internal Revenue Code with respect to any said transfer.

V.

The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Petitioner's husband died January 4, 1949, leaving an estate composed entirely of the community property of himself and petitioner acquired after 1927.

(b) Said decedent's last Will was duly probated on or about February 3, 1949. Said decedent purported, by said Will, to dispose of the entire community property of decedent and petitioner. Under the terms of said Will petitioner was entitled to receive certain bequests and to become life beneficiary of a residuary trust, if, but only if, petitioner elected to permit her property to pass according to the terms of the Will. The material provisions of the Will relating to said trust are as follows:

"Seven: All the rest, residue and remainder of my estate I give, devise and bequeath to my wife, Mildred Irene Siegel, Ben Weingart and N. B. Alison, or the survivor of them, In Trust, however, for the uses and purposes hereinafter specified and not otherwise:

"(a) To pay to my beloved wife, Mildred Irene Siegel, for the support, maintenance and care of herself and our beloved son, Richard Bruce Siegel, such sums as in the sole discretion of the majority of said trustees they deem proper to maintain at least the same standard of living to which she has been accustomed in recent years, but in no event less than the sum of One Thousand ($1,000.00) Dollars per month;

* * * * *

"(c) In the event the net income from my trust estate is not sufficient to make the payments above

provided, then and in that event I specifically authorize my Trustees to make payments from the corpus of said trust estate to the extent necessary to provide for the payments as above set forth;

"(d) The said trustees shall be the sole judges and it shall be in their sole discretion as to what constitutes income to said trust;

* * * * *

"(j) I specifically direct that during the life of the three trustees herein named, a majority thereof shall be authorized to act for and on behalf of said trustees, while if two living it shall require their unanimous approval, and if they are not able to agree, then either may petition the Court having jurisdiction of the probate of my estate for instructions;

* * * * *

"(l) Upon the termination of said trust, I specifically direct that the corpus of said trust remaining shall by my said trustees be paid out and distributed as follows: To my said beloved son, Richard Bruce Siegel, if living, otherwise to his lawful issue, if any, share and share alike; in the event of the death of my beloved son prior thereto, without lawful issue, then the residue of my trust estate shall by my said trustees be distributed one-half (½) thereof to those who would then be my heirs at law if my death had occurred at the time of the termination of said trust and one-half (½) thereof to those who would then be my wife's heirs at law, if her death had occurred at the same time, if my said beloved wife takes under this will in lieu of her

community rights and if she elects to take by reason of her community rights and not under the will, then the whole thereof shall be distributed to those who would then be my heirs at law if my death had occurred at the time of the termination of said trust."

(c) On or about January 5, 1950, petitioner filed with the court in which said estate was being administered, her written election to take under said Will in lieu of any and all community property rights which she might have in said estate. Petitioner filed such election so that she would be entitled to said bequests, including the life interest in her husband's one-half of the community property, which were available to her only if she elected to take under such Will and not to take her community share.

(d) The gross value of the community property of decedent and petitioner, as determined for federal estate tax purposes, was $1,422,897.14. The amount of the debts and administration expenses chargeable to the principal of said estate and paid through March 31, 1954 was approximately $438,-878.97. The value of the one-half share of community property to which petitioner would have been entitled after administration would not exceed $490,000.

(e) On or about January 31, 1950, a partial distribution of property of the value of $668,714.75 was made to petitioner, Ben Weingart and N. V. Alison, as trustees under the Will of said decedent, to be held by them according to the terms of the

trust established by said Will. Not more than one-half of said property, or $334,357.38, represented petitioner's community share. No other distribution to said trust has been made by said estate or petitioner. As part of said partial distribution petitioner received two Cadillac automobiles of the value of $7,000, which were the community property of petitioner and decedent. Thereafter, in August, 1950, petitioner received the sum of $35,000 from said estate in payment of the legacy bequeathed to her by decedent. As of March 31, 1954, cash and property of the value of approximately $298,372.47 still remained in said estate. Of said amount not more than $150,000 represented petitioner's community share.

(f) Petitioner has been paid the following amounts by said trustees under the terms of said testamentary trust: in 1950, $24,000; in 1951, $54,000; in 1952, $54,000; in 1953, $52,000. Payments for said trust in the amount of not less than $54,000 per year are required by petitioner to maintain herself in the standard of living to which she was accustomed in the years immediately preceding her husband's death, and petitioner is entitled to annual payments from the trust in the future of like amounts.

(g) Petitioner was born February 21, 1902. Richard Bruce Siegel, the son of petitioner and decedent, was born May 14, 1943.

Wherefore, petitioner prays that this Court may

hear the proceedings and determine that respondent erred as set forth in paragraph IV herein.

Dated: April 19, 1954.

/s/ A. R. KIMBROUGH,
/s/ AUSTIN H. PECK, JR.,
/s/ HENRY C. DIEHL,
Counsel for Petitioner

Duly Verified.

EXHIBIT "A"

Form 1230

U. S. Treasury Department, Internal Revenue Service, District Director, Chief, Audit Division, Post Office Box 231—Main Office, Los Angeles 53, California. Feb. 8, 1954

In replying refer to: A:R:90D:SWP MI 8111, Ext. 400

Mildred Irene Siegel, Donor
406 South June Street
Los Angeles 5, California

Dear Mrs. Siegel:

You are advised that the determination of your gift tax liability for the calendar year 1950 discloses a deficiency of $51,144.24, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax

Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the District Director of Internal Revenue, Chief, Audit Division, P. O. Box 231, Main Office, Los Angeles 53, Calif. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

T. Coleman Andrews
Commissioner
By R. A. Riddell
District Director of Internal Revenue

Enclosures:

Statement, Form 1276, Agreement Form.

Statement

Gift tax year: 1950; Liability, $51,144.24; Assessed, none; Deficiency, $51,144.24.

In making this determination of Federal gift tax liability of the above-named donor, careful consideration has been given to the information on file in this office.

Year 1950

Adjustments to Net Gifts

Schedule A of return	Returned	Determined
Total gifts of donor	.00	$287,788.51
Less: total exclusions	.00	.00
Total amount of included gifts	.00	$287,788.51
Less: specific exemption	.00	30,000.00
Net gifts	.00	$257,788.51

Explanation of Adjustments

Schedule A—

The transfer by the above-named donor to her son of a remainder interest in her one-half interest in community property which she transferred to a testamentary trust established under the last will and testament of Irving Siegel, Deceased, is determined to constitute a transfer by said donor without consideration in money or money's worth, and a gift within the meaning of Section 1000 of the Internal Revenue Code.

The value of such remainder interest is determined on the basis of the present worth factor, .46002, or the present value of $1.00 due at the end of the year of death of a person of the age of the donor who was born February 21, 1902. The value of such remainder interest is determined and computed as follows:

Determined value of donor's one-half interest in community property, $625,600.00, times .46002 or, $287,788.51.

It is determined that no exclusion is allowable within the meaning of Section 1003(b)(3) of the Internal Revenue Code. The gift in trust, being limited to commence in use, possession, and enjoyment at some future date, is determined to represent a future interest within the meaning of said section of the Code. In accordance with the provisions of Section 1004(a)(1) (as amended by Section 455 of the Revenue Act of 1942) the amount of $30,000.00 is allowed as Specific Exemption in the computation of the gift taxes with respect to said calendar year 1950.

Computation of Gift Tax

	Returned	Determined
Net Gifts for 1950	.00	$257,788.51
Total net gifts for preceding years	.00	.00
Total net gifts	.00	$257,788.51
Tax on total net gifts	.00	$ 51,144.24
Less tax on net gifts for preceding years	.00	.00
Total tax payable for 1950	.00	$ 51,144.24
Total tax assessed		.00
Deficiency		$ 51,144.24

[Endorsed]: T.C.U.S. Filed April 29, 1954.

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, for answer to the petition of the above-named taxpayer, admits and denies as follows:

I to III, inclusive

Admits the allegations contained in paragraphs I to III, inclusive, of the petition.

IV.

(a) to (g), inclusive. Denies the allegations of error contained in subparagraphs (a) to (g), inclusive, of paragraph IV of the petition.

V.

(a) Admits petitioner's husband died January 4, 1949, leaving an estate of community property of himself and petitioner; denies for lack of sufficient information the remaining allegations contained in subparagraph (a) of paragraph V of the petition.

(b) Admits petitioner's husband's last Will was duly probated on or about February 3, 1949; admits those provisions set out in subparagraph (b) of petitioner's deceased husband's Will; denies for lack of sufficient information the remaining allegations contained in subparagraph (b) of paragraph V of the petition.

(c) to (f), inclusive. Denies for lack of sufficient information the allegations contained in subpara-

graphs (c) to (f), inclusive, of paragraph V of the petition.

(g) Admits petitioner was born February 21, 1902; denies for lack of sufficient information the remaining allegations contained in subparagraph (g) of paragraph V of the petition.

VI.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ DANIEL A. TAYLOR, ECC
Chief Counsel, Internal Revenue Service

Of Counsel:

Woolvin Patten, Acting Regional Counsel
E. C. Crouter, Assistant Regional Counsel,
R. E. Maiden, Jr., Special Assistant to Regional Counsel,
John J. Burke, Special Attorney, Internal Revenue Service.

[Endorsed]: T.C.U.S. Filed June 22, 1954.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

Petitioner and respondent, through their respective counsel of record, hereby stipulate and agree that the facts hereinafter set forth are true:

(1) Petitioner herein, Mildred I. Siegel, is an individual residing in the City of Los Angeles, California. Petitioner's Gift Tax return for the period here involved was timely filed with the Collector of Internal Revenue for the Sixth District of California, at Los Angeles. The tax in controversy is a Gift Tax for the calendar year 1950 in the amount of $51,144.24, and the entire amount of said deficiency is in dispute.

(2) Petitioner is the widow of Irving Siegel, who died January 4, 1949. Petitioner was born on February 21, 1902. Petitioner and said decedent had one son, Richard Bruce Siegel, who was born on May 14, 1943, and who presently resides with petitioner.

(3) Said decedent left an estate consisting of community property. All of said community property was acquired by petitioner and decedent after 1927. The value of said community property on the date of decedent's death was $1,422,897.14, and the value of petitioner's half share therein was $711,-448.57.

(4) Said decedent's last will was duly probated on February 3, 1949, in the Superior Court, County of Los Angeles, California. A true copy of said will is attached hereto as Joint Exhibit "1-A".

(5) On January 5, 1950, petitioner filed with said Court a document of which the following is a true copy:

"Election of Widow to Take Under Will

I, the undersigned, Mildred I. Siegel, widow of Irving Siegel, deceased, do hereby elect to take under the Last Will and Testament of said deceased in lieu of any and all community property rights which I have in said estate.

Dated this 5th day of January, 1950.

Mildred Irene Siegel

(Mildred Irene Siegel)"

(6) On January 31, 1950 said Court ordered partial distribution of said estate and pursuant to said order property of the fair market value of $651,-630.34 was distributed to petitioner, Ben Weingart and N. V. Alison, as trustees under the will of said decedent, to be held by them according to the terms of the trust established by said will. All of said property so distributed had been the community property of Petitioner and decedent prior to decedent's death, and all of said property consisted of real and personal property other than money. No other distribution to said trust has been made by said estate or said Petitioner.

(7) The administration of said estate has not yet been closed but is about to be closed. In the course of administration, said estate has disbursed the following amounts which are apportionable as indicated between Petitioner's one-half share of the community property and decedent's one-half share thereof:

(a) On account of debts and administration expenses the sum of $229,772.50; one-half of said sum, or $114,886.25, is chargeable against Petitioner's said share and the other one-half against decedent's said share.

(b) On account of federal estate tax, the sum of $201,840.48, which sum is chargeable solely against decedent's said share.

(c) On account of inheritance tax imposed on the bequests to decedent's son and relatives other than Petitioner, the sum of $26,145.30, which sum is chargeable solely against decedent's said share.

(d) On account of inheritance tax imposed upon transfers to petitioner, the sum of $9,026.88, which sum is chargeable against Petitioner's said share.

(e) Pursuant to the terms of said will, legacies to persons other than Petitioner in the sum of $35,000, which sum is chargeable solely against decedent's said share.

(f) Pursuant to the terms of said will, property (automobiles) to Petitioner, which property was of the value of $7,000; one-half of said sum, or $3,500, is chargeable against Petitioner's said share and one-half against decedent's said share.

(8) In the course of administration, the sum of $35,000 cash was paid to Petitioner pursuant to the terms of said will. Petitioner contends that all of said amount is chargeable against her said share and respondent contends that all of said amount is chargeable to decedent's said share.

(9) The balance of the property remaining in the estate, determined by subtracting the expenditures

and distributions hereinabove set forth from the total community property of decedent and Petitioner, will be distributed to the aforesaid trustees to be held in trust pursuant to the provisions of said will.

(10) In the course of administration, said estate has received, on account of decedent's half interest in the community property, net income in the amount of $27,319.25. Said amount will be distributed to the aforesaid trustees to be held in trust pursuant to the provisions of said will. Said estate has also received net income in the amount of $36,642.60 on account of Petitioner's half interest, which amount will be distributed outright to Petitioner.

(11) Petitioner has been paid the following amounts by said trustees under the terms of said testamentary trust: in 1950, $24,000; in 1951, $54,000; in 1952, $54,000; in 1953, $52,000; in 1954, $48,000. In the year 1950 Petitioner received from the estate of said decedent a family allowance of $18,000 in addition to the sum received from said trustees.

(12) The value of the life interest of Petitioner in property in which Petitioner had a life interest in 1950 would be determined by multiplying the value of such property by 4% and multiplying the product by the factor 13.03942. The value of a remainder interest commencing upon the termination of Petitioner's life interest in any such property in 1950 would be determined by multiplying the value of said property by the factor .46002. If

Petitioner's son had an enforceable right of support from said trust, then the value of said right in 1950 would be determined by multiplying the annual cost of such support by (a) the factor 13.03942 if said right existed for Petitioner's life, or (b) the factor 11.11839 if said right existed for said son's minority.

(13) This stipulation shall not prevent the introduction of any additional evidence by either of the parties hereto, and the fact that any fact has been stipulated to hereinabove shall not be deemed to be an indication by either party that such fact is material and shall not prevent either party from objecting to the materiality of such fact upon the trial of this action.

Dated: June 20, 1955.

/s/ DANA LATHAM,
Attorney for Petitioner

/s/ JOHN POTTS BARNES, REM
Chief Counsel, Internal Revenue Service

JOINT EXHIBIT No. 1-A

LAST WILL AND TESTAMENT OF IRVING SIEGEL

In the Name of God, Amen:

I, Irving Siegel, of the City and County of Los Angeles, State of California, being of sound and disposing mind, memory and understanding, and not acting under restraint or undue influence, do make, publish and declare this to be my Last Will

and Testament, hereby revoking all other wills and codicils by me heretofore made.

One: I hereby direct my Executors hereinafter named to pay all my just debts and funeral expenses as soon after my demise as can be lawfully and conveniently done.

Two: I hereby state and declare that I am married, that my wife's name is Mildred Siegel, and we have one son, Richard Bruce Siegel, whom we heretofore legally adopted.

Three: I give, devise and bequeath to my beloved wife, Mildred Irene Siegel, the property which I may be occupying at the time of my death as my home, together with the furniture, furnishings and equipment located therein, all my personal effects as well as any automobiles which I may own at the time of my death, and in addition thereto I give, devise and bequeath to my said wife, the sum of Thirty-five Thousand ($35,000.00) Dollars, which bequest is made primarily to offset the thirty-five thousand dollars which I am hereinafter bequeathing to my sisters and nephew, to the end that she may either retain this sum for her own use and benefit or divide it among her relatives in such manner as she may see fit.

Four: I give, devise and bequeath to my beloved sister, Anne Hoffman, the sum of Fifteen Thousand ($15,000.00) Dollars.

Five: I give, devise and bequeath to my beloved sister, Jean Sefman, the sum of Fifteen Thousand ($15,000.00) Dollars.

Six: I give, devise and bequeath to my nephew,

Gary Hoffman, the sum of Five Thousand ($5,000.00) Dollars.

Seven: All the rest, residue and remainder of my estate I give, devise and bequeath to my wife, Mildred Irene Siegel, Ben Weingart and N. B. Alison, or the survivor of them, In Trust, however, for the uses and purposes hereinafter specified and not otherwise:

(a) To pay to my beloved wife, Mildred Irene Siegel, for the support, maintenance and care of herself and our beloved son, Richard Bruce Siegel, such sum as in the sole discretion of the majority of said trustees they deem proper to maintain at least the same standard of living to which she has been accustomed in recent years, but in no event less than the sum of One Thousand ($1,000.00) Dollars per month.

(b) In the event of the death of my beloved wife prior to the termination of this trust, my said trustees are hereby authorized to pay out and expend for the support, maintenance, care and education of my beloved son, Richard Bruce Siegel, such sums as in the sole discretion of the majority of said trustees they deem proper, but in no event less than Fifty ($50.00) Dollars per week; the insertion of this minimum, however, shall in no event constitute a limitation on the money to be so expended as it is my desire that my said trustees shall be very liberal in such disbursements, to the end that my said beloved son will be well provided for, as well as obtain a good university education;

(c) In the event the net income from my trust

estate is not sufficient to make the payments above provided, then and in that event I specifically authorize my Trustees to make payments from the corpus of said trust estate to the extent necessary to provide for the payments as above set forth;

(d) The said trustees shall be the sole judges and it shall be in their sole discretion as to what constitutes income to said trust;

(e) The trust hereby created shall terminate and end upon the happening of any of the following events:

1. Upon the death of my beloved wife, Mildred Irene Siegel, if my beloved son, Richard Bruce Siegel, does not survive my said wife;

2. Upon the death of my wife, Mildred Irene Siegel, provided my said son, Richard Bruce Siegel, has then attained the age of thirty-one (31) years.

3. Upon the death of my beloved son, Richard Bruce Siegel, subsequent to the death of my beloved wife prior to such a time as he attains the age of thirty-one (31) years;

4. Upon my said son, Richard Bruce Siegel, attaining the age of thirty-one (31) years, if my said beloved wife, Mildred Irene Siegel, is not then living.

(f) In the event of the death of my said beloved wife, Mildred Irene Siegel, prior to such a time as my beloved son attains the age of twenty-one (21) then and in such event upon his attaining the age of twenty-one one-third (⅓) of the corpus of said trust estate shall by my said trustees be distributed to him, and upon his attaining the age of

twenty-six (26) years, one-half (½) of the remaining corpus of said trust estate;

(g) In the event of the death of my beloved wife after my said beloved son attains the age of twenty-one, but before attaining the age of twenty-six years, I specifically direct that one-third (⅓) of the corpus of said trust estate shall be distributed to my said beloved son upon the death of my beloved wife, and upon his attaining the age of twenty-six (26) there shall be distributed to him one-half of the remaining corpus of said trust estate.

(h) In the event of the death of my beloved wife after my said beloved son attains the age of twenty-six years, but before attaining the age of thirty-one years, I specifically direct that two-thirds (⅔) of the corpus of said trust estate shall be distributed to my said beloved son upon the death of my beloved wife;

(i) To carry out the express purposes of this trust, after they have assumed full management thereof, and in the aid of its execution and the proper administration management and disposition of the trust estate, the trustees are vested with general powers and discretions as though they, individually, were the owners of the trust estate, to manage, control, sell, convey, partition, divide, subdivide, exchange, improve and repair said trust property in such manner and in accordance with such procedure as they may deem advisable, and to lease the trust estate, or any part thereof, within or extending beyond the duration of this trust;

(j) I specifically direct that during the life of the three trustees herein named, a majority thereof shall be authorized to act for and on behalf of said trustees, while if two living it shall require their unanimous approval, and if they are not able to agree, then either may petition the Court having jurisdiction of the probate of my estate for instructions;

(k) In the event of the death of the survivor of my said trustees hereinbefore designated, prior to the termination of this trust, I hereby nominate and appoint The Farmers and Merchants National Bank of Los Angeles as Trustee;

(l) Upon the termination of said trust, I specifically direct that the corpus of said trust remaining shall by my said trustees be paid out and distributed as follows: To my said beloved son, Richard Bruce Siegel, if living, otherwise to his lawful issue, if any, share and share alike; in the event of the death of my beloved son prior thereto, without lawful issue, then the residue of my trust estate shall by my said trustees be distributed one-half (½) thereof to those who would then be my heirs at law if my death had occurred at the time of the termination of said trust and one-half (½) thereof to those who would then be my wife's heirs at law, if her death had occurred at the same time, if my said beloved wife takes under this will in lieu of her community rights and if she elects to take by reason of her community rights and not under the will, then the whole thereof shall be distributed to those who would then be my heirs at law if my

death had occurred at the time of the termination of said trust.

Eight: The provisions made in this my Last Will and Testament for my beloved wife, Mildred Irene Siegel, are in lieu of her community rights and interest, and if she elects to take her community interest, in lieu of taking under this my Last Will and Testament, then the bequests made to her in paragraph Three hereof shall be of no force and effect and the real and personal property so bequeathed shall become a part of the rest, residue and remainder of my said estate to be distributed to my said trustees, and likewise subdivision (a) of paragraph Seven shall be of no force and effect and she shall take nothing as a beneficiary under said trust.

Nine: In the event of my death, and the death of my beloved wife thereafter prior to such a time as she shall have nominated and appointed, by will or otherwise, a guardian of the person of our beloved son, Richard Bruce Siegel, I hereby nominate and appoint my sister, Anne Hoffman, as guardian of the person of my said son, Richard Bruce Siegel.

Ten: I hereby nominate and appoint my beloved wife, Mildred Irene Siegel, Ben Weingart and N. B. Alison, or the survivor of them, as executors of this my Last Will and Testament to act without bond.

Eleven: If any person who is, or claims under or through, a devisee, legatee, or beneficiary under this will, or any person who if I had died intestate

would be entitled to share in my estate, shall, in any manner whatsoever, directly or indirectly contest this Will or attack, oppose or seek to impair or invalidate any provision hereof, or conspire or cooperate with anyone attempting to do any of the acts or things aforesaid, then I hereby bequeath to each such person the sum of One Dollar only, and all other bequests, devises and interests in this Will given to such person shall be forfeited and be distributed as the rest, residue and remainder of my estate.

In Witness Whereof, I have hereunto set my hand this 31st day of March, 1948.

/s/ Irving Siegel, Testator

Irving Siegel on the 31st day of March, 1948, in our presence and in the presence of each of us, acknowledged to us that his signature to the foregoing instrument, consisting of six (6) pages, was made by him on the date hereof, and at the same time and in our presence and in the presence of each of us declared that said instrument was his Last Will and Testament, and at his request and in his presence and in the presence of each other, we subscribed our names as witnesses hereto this 31st day of March, 1948.

/s/ Louis H. Boyor
Residing at 813 Holbell Rd.

/s/ H. D. Poirier
Residing at 1624 S. St. Andrews

[Endorsed]: T.C.U.S. Filed June 20, 1955.

Tax Court of the United States

26 T. C. No. 91

Mildred Irene Siegel, Petitioner, vs. Commissioner of Internal Revenue, Respondent.

Docket No. 52700 Filed June 29, 1956

FINDINGS OF FACT AND OPINION

Petitioner's husband provided in his will that, in lieu of her taking her approximate $584,000 share in their community property under California law, she was to receive (1) a bequest of $35,000 and (2) payments for life from a residuary trust established under the will. Petitioner elected to take under the will. Respondent determined that, as a result of such election, she made a gift to the remainderman (her son) under the testamentary trust of the reversionary interest in her $584,000 share of community property. Held, a gift was made to the remainderman to the extent of petitioner's community one-half of the principal less the life estate reserved by her therein, reduced by the value of the life estate received by her in the husband's part of the community property conveyed to the testamentary trust, plus $35,000 bequest in cash which she received under the will.

Dana Latham, Esq., and Grover R. Heyler, Esq., for the petitioner.

John J. Burke, Esq., for the respondent.

The Commissioner determined a deficiency of $51,144.24 in petitioner's gift tax for 1950. The

Commissioner's determination is based upon an adjustment explained in the deficiency notice as follows:

The transfer by the above-named donor to her son of a remainder interest in her one-half interest in community property which she transferred to a testamentary trust established under the last will and testament of Irving Siegel, Deceased, is determined to constitute a transfer by said donor without consideration in money or money's worth, and a gift within the meaning of Section 1000 of the Internal Revenue Code.

The value of such remainder interest is determined on the basis of the present worth factor, .46002, or the present value of $1.00 due at the end of the year of death of a person of the age of the donor who was born February 21, 1902. The value of such remainder interest is determined and computed as follows:

Determined value of donor's one-half interest in community property, $625,600.00, times .46002 or, $287,788.51.

Petitioner, by appropriate assignments of error, contests the Commissioner's determination.

Findings of Fact

Many of the facts were stipulated, are found as stipulated, and the stipulation is incorporated herein by reference.

Petitioner is an individual residing in Los Angeles, California. Her gift tax return for 1950 was timely filed with the then collector of internal revenue for the sixth district of California.

Petitioner was born on February 21, 1902. She is the widow of Irving Siegel (hereinafter sometimes referred to as Irving) who died on January 4, 1949. She and Irving had an adopted son, Richard Bruce Siegel, who was born on May 14, 1943, and who presently resides with petitioner. Irving left an estate consisting of community property, all of which was acquired by petitioner and Irving after 1927. On the date of Irving's death the gross value of that community property was $1,422,897.14, and the gross value of petitioner's one-half share therein was $711,488.57.

Irving's last will was duly probated on February 3, 1949, in the Superior Court, County of Los Angeles, California. Pertinent provisions of that will follow:

Three: I give, devise and bequeath to my beloved wife, Mildred Irene Siegel, the property which I may be occupying at the time of my death as my home, together with the furniture, furnishings and equipment located therein, all my personal effects as well as any automobiles which I may own at the time of my death, and in addition thereto I give, devise and bequeath to my said wife, the sum of Thirty-five Thousand ($35,000.00) Dollars, which bequest is made primarily to offset the thirty-five thousand dollars which I am hereinafter bequeathing to my sisters and nephew, to the end that she may either retain this sum for her own use and benefit or divide it among her relatives in such manner as she may see fit.

* * * * *

Seven: All the rest, residue and remainder of my estate I give, devise and bequeath to my wife, Mildred Irene Siegel, Ben Weingart and N. B. Alison, or the survivor of them, In Trust, however, for the uses and purposes hereinafter specified and not otherwise:

(a) To pay to my beloved wife, Mildred Irene Siegel, for the support, maintenance and care of herself and our beloved son, Richard Bruce Siegel, such sum as in the sole discretion of the majority of said trustees they deem proper to maintain at least the same standard of living to which she has been accustomed in recent years, but in no event less than the sum of One Thousand ($1,000.00) Dollars per month;

* * * * *

(c) In the event the net income from my trust estate is not sufficient to make the payments above provided, then and in that event I specifically authorize my Trustees to make payments from the Corpus of said trust estate to the extent necessary to provide for the payments as above set forth;

* * * * *

(j) I specifically direct that during the life of the three trustees herein named, a majority thereof shall be authorized to act for and on behalf of said trustees, while if two living it shall require their unanimous approval, and if they are not able to agree, then either may petition the Court having jurisdiction of the probate of my estate for instructions;

* * * * *

Eight: The provisions made in this my Last Will and Testament for my beloved wife, Mildred Irene Siegel, are in lieu of her community rights and interest, and if she elects to take her community interest, in lieu of taking under this my Last Will and Testament, then the bequests made to her in Paragraph Three hereof shall be of no force and effect and the real and personal property so bequeathed shall become a part of the rest, residue and remainder of my said estate to be distributed to my said trustees, and likewise subdivision (a) of paragraph Seven shall be of no force and effect and she shall take nothing as a beneficiary under said trust.

On January 5, 1950, petitioner duly executed and filed with the aforementioned Superior Court a document in which she elected to take under Irving's last will in lieu of any and all community property rights she had in the community estate. She did this in order to be able to maintain her accustomed standard of living, which she felt could not be done solely from the income from her share of the community property. On January 5, 1950, the respective net values of Irving's and petitioner's shares in the community property destined to fall into the trust created under paragraph "Seven" of Irving's will were as follows:[1]

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[1] The parties agree that hindsight may be availed of and expenditures not actually made until after January 5, 1950, should be considered in arriving at the net values as of that date.

	Irving's Share	Petitioner's Share
Gross value at Irving's death	$711,448.57	$711,448.57
Less:		
Debts and administration expenses	114,886.25	114,886.25
Federal estate tax	201,840.48	
Inheritance taxes on bequests other than to petitioner	26,145.30	
Inheritance tax on bequests to petitioner		9,026.88
Legacies other than to petitioner	35,000.00	
Legacy to petitioner	35,000.00	
Automobiles bequeathed to petitioner	3,500.00	3,500.00
Total deductions	$416,372.03	$127,413.13
Net value	$295,076.54	$584,035.44

Irving was a very successful businessman and he and petitioner maintained a high standard of living. In 1948, the year preceding Irving's death, their living costs were over $46,500 before income taxes. Beginning with 1950, when petitioner elected to take under Irving's will, she has received and expended amounts from the trust thereunder as follows:

Year	Received from the Trust	Total Expenditures	Federal and State Income Taxes Included in Total Expenditures
1950	$24,000*	$31,720.32	$ 4,500.00
1951	54,000	50,462.11	18,524.23
1952	54,000	43,313.60	20,296.83
1953	52,000	46,656.79	18,413.06
1954	48,000	47,267.98	22,329.39

* Petitioner also received an $18,000 allowance from Irving's estate in 1950.

Included in the above total expenditures were sums expended by petitioner for the support of her and Irving's son which averaged well under $3,000 per year.

Under the economic conditions existing during the years subsequent to decedent's death and prior to this hearing it would cost petitioner $45,000 per year, including income taxes, to maintain the standard of living to which she was accustomed in recent years prior to decedent's death.

Opinion

Black, Judge: Respondent's position is that petitioner's January 5, 1950 election to take under Irving's will, in lieu of asserting her community property rights in the estate acquired during coverture, resulted in her making a gift to her son of a remainder interest in her one-half interest in community property which she thus transferred to a testamentary trust established under the last will and testament of Irving.[2] Respondent has stipulated that the net value of petitioner's community share at the date of gift was no greater than $584,035.44 (as opposed to the value of $625,600 determined in the deficiency notice). When $584,035.44 is multiplied by the factor .46002, pursuant to Regulations 108, section 86.19(g), Table A, Column 3 (reversion

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[2] Internal Revenue Code of 1939.

Sec. 1002. Transfer for Less than Adequate and Full Consideration.

Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

after life estate in 48-year old person), a figure of $268,667.98 (instead of the $287,788.51 in the deficiency notice) is arrived at for the value of the remainder. Respondent now maintains that petitioner made a taxable gift in 1950 in the amount of that $268,667.98, instead of $287,788.51 as determined in the deficiency notice.

Petitioner, on the other hand, argues that she made no gift because the transaction was without donative intent and was solely motivated by consideration of her own economic advantage and that, in any event, she received "adequate and full consideration in money or money's worth" for the remainder interest which, as a result of her election, was transferred to Irving's trust for her son's benefit.

We have recently enunciated the basic principles applicable to situations of this type in Chase National Bank, 25 T.C. 617. It is clear from a reading of that case that petitioner must be considered as having made a gift to the extent that the value of the interest she surrendered in her share of the community property exceeded the value of the interest she thereby acquired under the terms of Irving's will. If petitioner received more than she surrendered then, of course, no gift has been made. Our task, therefore, is to determine the value of what she received for what she gave up. In the Chase National Bank case, supra, we laid down the rule for measuring the value of the gift of the remainder interest in the testamentary trust there involved, as follows:

> We therefore hold that Marie's acquiescence in this trust constituted a taxable gift to the extent of her community one-half of the principal less the life estate reserved by her therein, reduced by the value of the life estate received by her in the other one-half of the trust as consideration.

The same rule should be applied here in a computation under Rule 50, except that in the instant case petitioner received an outright bequest of $35,000 under decedent's will. That $35,000 should be added as a portion of what petitioner received for what she gave up.

In fixing the valuation of decedent's one-half interest in the community property which went into the testamentary trust and in fixing the value of petitioner's one-half interest in the community property which went into the testamentary trust, the parties have entered into an extensive stipulation concerning these matters. Only one item in the matter of valuation remains to be decided. This question is whether the petitioner's legacy under the will in the amount of $35,000 should be considered as a bequest of decedent's one-half of the community property and, accordingly, not subtracted from the value of petitioner's community interest, as the respondent contends, or whether it should be considered as applied in toto against the petitioner's share of the community property and thus reduce by $35,000 the value of what the petitioner contributed to the trust, as the petitioner contends.

We have decided this difference between the parties in accordance with respondent's contention. Accordingly, in our Findings of Fact we have reduced decedent's share of the community property which otherwise would have gone into the testamentary trust by this $35,000. It seems clear to us from this provision in decedent's will that he realized that if Mildred took under the will she would not receive any lump sum payment in cash and it was his desire that this $35,000 should be paid to her in order that she could give a like amount to her relatives, as he was bequeathing to his relatives, or, if she preferred, she could use the $35,000 in any manner that she desired. So it seems to us that when all the provisions of the will are considered it is reasonable to conclude that decedent intended that this $35,000 should be paid out of his share of the community property and we have so treated it in our Findings of Fact. However, it also seems equally clear that this $35,000 became a part of what petitioner received for what she gave up when she elected to take under decedent's will. To add this $35,000 to what petitioner received does no violence to the rule used in Chase National Bank, supra, in valuing the amount of the gift. It simply adds another factor, which was not present in that case, to be used in determining the value of the gift.

There is another issue which petitioner raises which we think we must discuss and that is the effect of that provision in decedent's will which reads as follows:

Seven: * * *

(a) To pay to my beloved wife, Mildred Irene Siegel, for the support, maintenance and care of herself and our beloved son, Richard Bruce Siegel, such sum as in the sole discretion of the majority of said trustees they deem proper to maintain at least the same standard of living to which she has been accustomed in recent years, but in no event less than the sum of One Thousand ($1,000.00) Dollars per month;

Petitioner in effect argues that this provision in the will was tantamount to giving petitioner an annuity at least large enough to maintain the standard of living which she enjoyed in the recent years prior to decedent's death, which she contends was not less than $46,000 annually, and that this right should be valued as was done in Estate of Sarah A. Bergan, 1 T.C. 543, and that when this is done, the rights which petitioner received under the terms of the testamentary trust are considerably in excess of the remainder interest in her share of the community property which went to her son under the terms of the trust. Hence petitioner contends there was no gift because she received considerably more than she gave up.

We are not persuaded by this argument. True, in our Findings of Fact we have a finding based on the evidence which says:

Under the economic conditions existing during the years subsequent to decedent's death and prior to this hearing it would cost petitioner $45,000 per year, including income taxes, to maintain the

standard of living to which she was accustomed in recent years prior to decedent's death.

But we do not think this finding helps petitioner. Under the terms of paragraph Seven of the will, what was to be paid to petitioner was "such sum as in the sole discretion of the majority of said trustees they deem proper to maintain at least the same standard of living to which she has been accustomed in recent years, but in no event less than the sum of One Thousand ($1,000.00) Dollars per month," (emphasis supplied). We do not think it would be possible to construe this provision in the will as spelling out an annuity such as petitioner claims. The large income of the trust seems to us to make very improbable the invasion of principal in order to provide the minimum payments of $1,000 a month. Hence, it seems to us that we would not be justified in adding the value of the right of petitioner to have the principal invaded as one of the things which she received for what she gave up.

In Chase National Bank, supra, in the testamentary trust there involved, the trustee was given a broad discretionary power to distribute principal to any beneficiary. It was requested to exercise such discretion liberally but its decision was made final and conclusive. In that case we said:

In determining the value of the gift made by Marie in respect of the Testamentary Trust we have not ignored the provision conferring upon the trustee the discretionary power to distribute principal. This power is one which the trustee has the

right to use or not to use, as it wishes, but it does not represent anything given to or received by Marie that is capable of valuation. * * * The amount of the taxable gift may not be reduced by reason of a possibility, over which Marie had no control and which is incapable of valuation, that the corpus or a part of it might be paid over to her. Cf. Robinette vs. Helvering, 318 U.S. 184, 188-189.

We think we must so hold in the instant case. While there is some difference in the power of the trustees in the instant case to invade the corpus for purpose of making payments to petitioner from the power which was given the trustee to invade the corpus in the Chase National Bank, supra, we think we would be unable to spell out a valid distinction between the two cases. We hold against petitioner on this issue.

Decision will be entered under Rule 50.

Tax Court of the United States
Washington

Docket No. 52700

MILDRED IRENE SIEGEL, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

DECISION

Pursuant to the Findings of Fact and Opinion of the Court filed June 29, 1956, the parties herein

on October 2, 1956, having filed an agreed computation of the tax, now therefore, it is

Ordered and Decided: that there is a deficiency in gift tax for the year 1950 in the amount of $4,314.87.

[Seal] /s/ EUGENE BLACK,
Judge

Entered October 3, 1956.

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 52700

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,

vs.

MILDRED IRENE SIEGEL,
Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judge of the United States Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on October 3, 1956, ordering and deciding that there is a deficiency in gift tax for the year 1950 in the amount of $4,314.87. This petition for review is filed pursuant

to the provisions of sections 7482 and 7483 of the Internal Revenue Code of 1954.

The respondent on review (hereinafter referred to as the taxpayer) resides at 406 South June Street, Los Angeles, California. The taxpayer filed her gift tax return for the year 1950 with the Collector of Internal Revenue at Los Angeles, California, and within the judicial circuit of the United States Court of Appeals for the Ninth Circuit, wherein this review is sought.

Nature of Controversy

The question involved is that since the Tax Court held that taxpayer's election to take under the terms of her deceased husband's will constituted a gift by her of her one-half of the community property, should the amount of such gift be measured by her community one-half reduced only by the present value of the life estate that she retained therein, or should it be further reduced by the present value of her life estate in the husband's one-half of the community and a specific bequest granted her by the terms of the will?

Taxpayer's husband's will purportedly disposed of the entire community property even though under the laws of California one-half of such was the absolute property of the taxpayer. The taxpayer elected to take under the will of her deceased husband, which necessitated a transfer to the trust created by the will of her interest in property which had been the community property of herself and her deceased husband. The will provided that tax-

payer's interest in the trust was the right to receive the income for life, and her son was to be the remainderman of the trust corpus consisting of the entire community estate. The Commissioner took the position that the gift consisted of the value of taxpayer's one-half interest in the community estate less the value of a life estate in one-half of the community estate.

/s/ CHARLES K. RICE,
Assistant Attorney General

/s/ JOHN POTTS BARNES,
Chief Counsel, Internal Revenue Service, Counsel for Petitioner on Review

[Endorsed]: T.C.U.S. Filed December 20, 1956.

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR REVIEW

To: Dana Latham, Esq., c/o Latham & Watkins, Suite 830, Statler Center, Los Angeles 17, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 20th day of December, 1956, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled

cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 20th day of December, 1956.

/s/ JOHN POTTS BARNES,
Chief Counsel, Internal Revenue Service, Counsel for Petitioner on Review

Acknowledgment of Service attached.

[Endorsed]: T.C.U.S. Filed January 3, 1957.

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR REVIEW

To: Mildred Irene Siegel, 406 South June Street, Los Angeles, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 20th day of December, 1956, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 20th day of December, 1956.

/s/ JOHN POTTS BARNES,
Chief Counsel, Internal Revenue Service, Counsel for Petitioner on Review

Acknowledgment of Service attached.

[Endorsed]: T.C.U.S. Filed January 3, 1957.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS

Comes Now the petitioner on review herein and makes this concise statement of points on which he intends to rely on the review herein, to-wit:

The Tax Court of the United States erred:

1. In holding that the amount of the gift should be measured by taxpayer's community one-half reduced by the present value of her life interest in the husband's one-half of the community and a specific bequest granted to her by the terms of the will.

2. In failing to hold that the amount of the gift should be measured by taxpayer's community one-half reduced only by the present value of the life estate that she retained therein.

3. In holding that there is a deficiency in gift tax for the year 1950 in the amount of $4,314.87.

4. In failing to hold that there is a deficiency in gift tax for the year 1950 in the amount of $51,144.24.

5. In that its opinion and decision are contrary to law and regulations and are not supported by its finding of fact or substantial evidence.

/s/ CHARLES K. RICE,
Assistant Attorney General
/s/ HERMAN T. REILING,
Acting Chief Counsel, Internal Revenue Service,
Counsel for Petitioner on Review

Acknowledgment of Service Attached.

[Endorsed]: T.C.U.S. Filed January 23, 1957.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF RECORD

To the Clerk of The Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Court of Appeals for the Ninth Circuit the following documents and records in the above-entitled cause, in connection with the petition for review by the said Court of Appeals heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries.
2. Pleadings: (a) Petition, including notice of deficiency, (b) Answer.
3. Opinion and decision of the Tax Court.
4. Stipulation of facts, with Exhibit 1-A attached.
5. Transcript of hearing at Los Angeles, California, on June 20, 1955.
6. All exhibits.
7. Petition for review and proofs of service.
8. Statement of points.
9. This designation.
10. Order extending time to file record on review.

/s/ CHARLES K. RICE,
Assistant Attorney General
/s/ HERMAN T. REILING,
Acting Chief Counsel, Internal Revenue Service,
Attorneys for Petitioner on Review

Acknowledgment of Service Attached.

[Endorsed]: T.C.U.S. Filed January 23, 1957.

Tax Court of the United States

[Title of Cause No. 52700.]

ORDER ENLARGING TIME

Upon consideration of motion of counsel for petitioner on review, it is

Ordered: That the time for filing the record on review and docketing the petition for review in the United States Court of Appeals for the Ninth Circuit is extended to March 20, 1957.

Dated: Washington, D. C., January 16, 1957.

[Seal] /s/ J. E. MURDOCK,

Entered January 17, 1957.

The Tax Court of the United States
Washington

[Title of Cause No. 52700.]

CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents 1 to 14, inclusive, constitute and are all of the original papers on file in my office as called for by the "Designation of Contents of Record on Review", including Joint Exhibit 1-A attached to the Stipulation of Facts and Petitioner's Exhibits 2 through 8, admitted in evidence, in the case before the Tax Court of the United States docketed at the above number, and in which the Re-

spondent in the Tax Court has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court case, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 7th day of February, 1957.

[Seal] /s/ HOWARD P. LOCKE,
Clerk, The Tax Court of the
United States

In the Tax Court of the United States

Docket No. 52700

MILDRED IRENE SIEGEL, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

TRANSCRIPT OF PROCEEDINGS

Courtroom No. 9, U. S. Post Office, Los Angeles, California, Monday, June 20, 1955.

The above-entitled matter came on for hearing, pursuant to notice to the parties, at 2:00 o'clock p.m.

Before: Honorable Eugene Black, J., presiding.

Appearances: Latham & Watkins, by Dana Latham, and Grover Heyler, 830 Statler Center, 900

Wilshire Blvd., Los Angeles, Calif., for the Petitioner. John J. Burke (Hon. Daniel A. Taylor, Chief Counsel, Internal Revenue Service) for the Respondent. [1*]

The Court: The Clerk will call the case that we have set at this time.

The Clerk: Docket No. 52700, Mildred Irene Siegel.

Mr. Latham: Petitioner is ready.

Mr. Burke: Respondent is ready, Your Honor. John J. Burke for the respondent.

Mr. Latham: Grover Heyler and Dana Latham for the petitioner.

The Court: Yes, Mr. Latham, you may make your opening statement at this time.

Mr. Latham: Your Honor, this is a gift tax case involving the year 1950, with approximately $51,000 of tax involved, all of which is in controversy. I think that, in order to explain the issues, it will be better to make a brief statement of all of the facts involved.

The Court: Yes, you may do that.

Mr. Latham: The petitioner's husband, Irving Siegel, died on January 4, 1949, a resident of Los Angeles, and all his estate at the time of his death was admittedly community property under the laws of the State of California, and further they were married here after 1927.

His will, which was dated March 31, 1948, purported to dispose of the entire community property,

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* Page numbers appearing at top of page of original Reporter's Transcript of Record.

and required the widow, the petitioner in this proceeding, to elect to either [3] take under the will or against it. Now, if she elected to take against the will, she received only her one-half of the community property, reduced by appropriate administration expenses. If she took under the will, she received the following, according to the will's terms:

The home and its furnishings. As a matter of fact, those items were in joint tenancy at the time of death, so they can be ignored for the purpose of this proceeding.

She received under the will his personal effects, his automobiles, and $35,000 in cash, and an interest for life in the income of a testamentary trust created under the will and which consisted of the entire residue of the estate. In that particular, the will provides—and I might add that these items are all attached as exhibits to the stipulation which will be submitted—the will provided that, with respect to this trust, Mrs. Siegel, the petitioner, should receive for the support, maintenance and care of herself and "our beloved son, Richard Bruce Siegel," sums such as in the sole discretion of the majority of the trustees they deem proper to maintain at least the same standard of living to which she had been accustomed in recent years, but in no event, less than the sum of $1,000 per month.

The will also provided that, "In the event the net income from the trust estate is not sufficient to make the payments above provided, then and in that event I specifically [4] authorize my trustees to make payments from the corpus of said trust

estate to the extent necessary to provide for the payments as set forth above."

Now, under the will, it also provides that after the widow's life estate in the entire trust, the remainder interest went to the minor son of the decedent and the petitioner.

On January 5, 1950, approximately a year after Mr. Siegel's death, Mrs. Siegel, the petitioner, elected in writing to take under the will. Now, the respondent fixed what he believed to be the value of the petitioner's one-half interest in the community property at the date she exercised her election, January 5, 1950, and on an actuarial basis, the respondent then determined the value of the remainder interest in this half of the community. He allowed $30,000 statutory exemption but no exclusion, and asserted the gift tax that is here in controversy.

The respondent gave no consideration nor allowance to or for the fact that the petitioner acquired an interest for life in her husband's half of the community property, and that is the basis for the controversy.

Now, the petitioner contends, first, that in the exercise of this right to take under the will, as opposed to against it, there was no donative intent. Instead, she made a deliberate choice, then, to give up the remainder interest in her one-half in exchange for a life estate, not only in her [5] half, which she retained, of course, but in her husband's one-half.

Now, accordingly, this should be no gift even if, on an actuarial basis, the value of the remainder

was slightly in excess of the commuted value of the interest which she acquired in her husband's half, in other words, where you have an arm's length dealing, no taxable gift can accrue merely because one party to the transaction apparently gets a little less in actuarial dollars than the other.

The petitioner's second contention is that even if she made a taxable gift or a gift, something she certainly never intended to do, she never thought about it, that in no event could the value of that gift exceed the difference between the value of her life estate and her husband's one-half of community, and the value of the remainder interest in her one-half, which the son acquired by virtue of the exercise of her election. There should be an offset, in any event, at the worst.

Now, finally, we contend that as a matter of fact the value of this gift can't be determined in this year 1950, because the decedent's estate is not closed, and the exact amount of the property which passes to the testamentary trust has not yet been determined, and it won't be determined until the executors of the estate actually pay it over to the testamentary trust. [6]

Now, here we only had a partial distribution to the trust in the year 1950. The respondent apparently is not basing his claim for a gift tax on the fact of distribution, but on the fact that an election was made at a certain time, and as a result of that election, and on that date, the respondent undertook to determine values on said date of the election, and then he reduced the amount by certain

charges and payments that were made; as a matter of fact, some of them weren't even determined until years after 1950.

So that, regardless of every other consideration, even if we were wrong on every other contention, the gift should not exceed the proper value of the property, actually paid into the testamentary trust in the year 1950.

Now, there are certain minor differences between petitioner and the respondent as to the treatment to be accorded certain amounts that were received by petitioner and expenses paid during probate.

With respect to some of these, the petitioner contends that her half of the community should be reduced by some of these charges, with respect to others we contend that the charge should be apportioned between the decedent's half of the community and her half.

Now, with respect to those items, the respondent disagrees. We will have no evidence with respect to those points; instead, they will be embodied in the stipulation of facts, [7] and the law applicable can be argued in our briefs.

We don't undertake to state for the respondent his views, but as we understand them I think these are they:

Of course, Mr. Burke will correct me as he sees fit.

First, as I understand it, the respondent contends that, in exercising her election, she never intended to bargain, but instead she intended to make

a gift of the remainder interest to her son, and therefore they ignore completely the interest which she acquired in her husband's half of the community.

The evidence which we will introduce, I think, will show that the exact opposite was true.

Secondly, as we understand it, the petitioner—the respondent contends that, even if petitioner did bargain, that she cannot offset against the value of this remainder interest, anything for the interest in her husband's half of the community, and I think, assuming they make that contention, that they base that on two contentions, 1, that she did not receive a full right, that is, indivisible right to the income, but only such amounts as the trust deeds chose to give her; and, second, that her son also received an enforceable right in this income from her husband's half of the estate.

Now, assuming that those are the contentions of the respondent, we answer them this way: In the first place, the petitioner was entitled under the specific terms of the will to [8] receive such amounts as would enable her to maintain, and I quote, "at least the same standard of living to which she had been accustomed at the date of her husband's death."

Now, the evidence which we will introduce will show that this standard of living required the payment to her of more than the entire actuarial income from the entire trust estate.

Further, the evidence will show that the trust deeds did, in fact, since Mr. Siegel's death, pay

her such amounts in conformity with the provisions of the will, and that such amounts were in excess of the actuarial value of the entire estate.

Therefore, there was no question but what she was entitled to the entire interest, and the trustees, the discretion in the trustees, instead of limiting or reducing her rights, really increased them, because the trustees were required under the will to pay her, not only such income as was necessary to maintain the standard of living, but they were required to invade corpus if the income was insufficient.

With respect to the son, and the interest if any that he acquired in this life income, we contend, first, that it is obvious from the examination of the will that it was never intended that the son acquire any enforcable interest in the trust income, and the decedent, in referring to the son, was merely referring to petitioner's general obligation to support [9] her minor child.

The payments are to be made to her, and the standard of living to be maintained is hers and hers alone.

Second, since the payments made to her have exceeded the entire actuarial income, there was nothing left for the son, in any event.

Finally, even if the son did acquire some interest, at the most, it would merely slightly reduce the value of the petitioner's life income in the husband's half of the community property.

Now, the evidence which will be introduced will

consist of a written statement of facts submitted as a joint exhibit, and certain oral testimony.

That concludes our statement.

The Court: All right, Mr. Latham.

Mr. Burke?

Mr. Burke: If the Court please, some of the comments I am going to make are going to be repetitious, since Mr. Latham did cover the facts very extensively.

As he has pointed out, when the petitioner's husband died, he was possessed of property which was the community property of the decedent and the widow, the petitioner herein.

Now, the decedent's will purported to dispose of all of the community property, providing that the widow, the [10] petitioner, elect under the will to take the interest the will gave her in lieu of her one-half interest in all of the community property, which vested in her upon the death of decedent.

As Mr. Latham has pointed out, there were specific bequests to the widow, to others, with the residue of this property going into the trust, providing for the income to be paid to petitioner during her life for support, and the support of her adopted son, their adopted son, with the remainder interest in the son.

Now, the will provided that if the widow elected to take her community share of the property, it should go, as it was provided therein, but if she elected to take the community property share, rather than her interest under the will, then the

provisions of the will in her favor were to become inoperative.

However, it doesn't clearly spell out the alternative disposition of the property.

As Mr. Latham pointed out, the decedent died in January, 1949, and the widow exercised her election on January 5, 1950.

As I said before, under the California community property law, on the death of the decedent, his widow held a vested one-half interest in all the property which had been the community property of herself and the deceased husband. [11]

However, inasmuch as this entire community is subject to probate, and subject to the debts of the decedent, the expenses of administration, such interest of the widow in the property was subject to one-half of all such debts and expenses.

We have generally agreed on all these amounts, as is evidenced in our stipulation.

I therefore think that if we have a transfer, if the Court is to determine that we have a transfer, we very definitely can value this transfer, because we have all of the elements which go into the value of such transfer. We have the gross amount of the value of each in the community property. We have the expenses and debts up to the time of the date of transfer, and we have the subsequent expenses and debts, if any, subsequent to the date of the transfer.

Now, it was my understanding, when we stipulated, that we would use those figures in computing any such value, if the Court determines in accord-

ance with our position that there was a transfer of this interest. Mr. Latham said that the value can't be determined as of January 5, 1950. Maybe I might have to have some additional explanation on that point. I thought his alternative position was that, if the Court doesn't determine there was a transfer of her entire interest as of January 5, 1950, that all she transferred as of that date was the amount actually distributed from the estate to the trust in 1950, an amount which we have agreed upon, we [12] could perhaps leave that open now and discuss it on brief. I am not sure whether we have disagreement of the facts.

Mr. Latham: If I may, just to clarify that, the various expenses, if your Honor please, that were paid after the distribution into the trust in 1950, we are not contending that those expenses should be charged against the distribution made in 1950. In other words, the amount that was actually distributed in the trust in 1950 is in the stipulation of facts.

Mr. Burke: That is right.

Mr. Latham: So there isn't any question of proportionment. Does that clarify——

Mr. Burke: I think I understand what you mean now. I misunderstood your statement, your opening statement.

To go on, then, when the petitioner made her election to take under the will, she gave up, in effect, her remainder interest in the one-half interest in the entire community property.

Now, the Commissioner has determined that, by

virtue of this election, the petitioner effected as of the date of the election the transfer of this interest, and inasmuch as the transfer was to an irrevocable testamentary trust, there was a completed irrevocable transfer of the entire remainder interest in her community share.

Accordingly, the value of the remainder as of January 5, 1950—and this amount we determined—is subject to [13] Federal gift tax.

Now, as I understand the petitioner's case, she has raised two major points. The first of these is that any such transfer as she may have made of her remainder interest was made in exchange for full and adequate consideration, so that there is no taxable gift, although I noticed that Mr. Latham didn't use those terminologies; I understand that it would mean the same thing. He referred to no donative intent.

Mr. Latham: I would be glad to use that, if you want me to. That is the way I feel.

Mr. Burke: Or that, in the alternative, it appears their argument was that there was some consideration flowing to the petitioner, by virtue of which she took under the will, which would reduce the amount subject to the gift tax.

The other point which we have just discussed is that the petitioner in the year 1950 transferred her one-half interest totaling $325,815.17 in the real property and the personal property, distributed to the trust from the estate in that year.

Now, in considering the question whether or not consideration, in fact, was given in exchange for

any transfer made by the petitioner, the primary question, as we see it, is what is meant by the term "consideration" as applied in Section 1002 of the Internal Revenue Code of 1939.

That states that when the property is transferred for [14] less than adequate and full consideration in money or money's worth, the amount by which the value of the property exceeded the value of the consideration shall be included in computing the amount of the gifts made.

As we see it, there are several interpretations which might be presented to this Court, for its determination as to what is meant by the term "consideration," as used in this section of the Code.

First of all, it could mean consideration flowing only from the donee, which would be the son in this case, to the donor.

Another interpretation to be placed on the term is that it refers only to legal consideration in the contractual sense, which would include third party beneficiary types of contracts.

In the instant case, there is clearly no consideration flowing to the petitioner from her son in consideration of the transfer. We need not go into that matter any further.

With respect to the consideration in a legal sense, it is also clear from the facts in our stipulation that no legal obligation arising out of any contract, either expressed or implied, existed by virtue of which the petitioner derived consideration in any form in exchange for her transfer. She was not bound to make this election.

Absent the existence of any contractual agreement [15] between the parties, there is no basis for any application of or inquiry into the matter of consideration, as the respondent contends. It is our position that if the petitioner is to prevail in her position in this respect, that the Court may even consider what she received under the will, there must be evolved a more generic concept of the term "consideration" to cover the facts in this case.

Now, in that respect, we believe that there is a very compelling and sound reason why the Court should not adopt any such theory. The basic legislative intent in the enactment of the Federal estate and gift tax law was to tax both the transfers devolving by operation of death and inter vivas transfers.

We contend that this basic legislative purpose would be perverted if this Court were to hold that the gift herein should be in any way reduced, as a result of any interest which the widow took under the will.

Analyzing this in more detail, it appears that what occurred here actually were three transfers:

In disposing of his one-half interest in the community, the only interest which he had an absolute right to transfer, the decedent made two transfers. He transferred a life interest in his wife, or in his wife and son, and a transfer of a remainder to the son. This is the type of transfer which the Federal estate tax legislation was enacted to tax. By [16] taxing all of the profit, we tax both of these transfers, since the net value of the estate represents

both the life interest and the remainder interest.

Now, going back to the interest which the petitioner had, this vested in her, as of the death of the decedent—this is just basic community property law. Now, at all times she held her entire one-half interest in the property and was free to dispose of such interest as she saw fit.

When she elected to take under the will, she of course retained her life interest in her one-half, and she transferred to an irrevocable testamentary trust a remainder interest in her one-half interest in the community property to her son.

Here was the third transfer, the transfer of the remainder interest, and this is the type of transfer that the Federal gift tax law was designed to tax.

We have, then, under our theory of the case all three transfers taxed in accordance with the overall Congressional intent. If we were now to turn about and use the transfer from the husband to the wife of his one-half interest in the community as an offset, we would be effectually eliminating the tax on one of the three transfers by offsetting the transfer to the son, by the transfer from the decedent. The effect would be to tax, not what I have referred to as three transfers herein, but only two. There might, of course, be some possible [17] differences in rates, but the principle would remain the same. Any such decision by the Court would have the effect of eliminating a tax on one of these transfers.

It is accordingly our principal contention that no such approach should be taken by this Court,

and no such interpretation should be given to the term "consideration" as would have this effect in operation.

Now, if this Court were to reject our principal contention and hold that there is consideration here, then it is our principal contention, and I believe that Mr. Latham has stated that when he speaks of an interest which the widow received, he refers only to a one-half interest, which is the interest from the decedent—you are not, as I understand, maintaining that the consideration was an entire life interest in all of the community?

Mr. Latham: She already had that.

Mr. Burke: I misunderstood your position.

So that our only position with respect to that life, our only issue with respect to that life interest, as I see it, only real issue, is the question of whether or not the widow received the entire one-half interest in the decedent's community property —property, or whether or not there was an interest also in her son.

Now, as Mr. Latham has stated, Paragraph 7 of the will provides that the income is to be paid to the widow for [18] her support and the support of her son. We contend that, in the absence of any other evidence to the contrary, a proper interpretation of this clause of the will requires a recognition that there is at least an interest created in the son to the extent of such income as is necessary to support and maintain him.

It has been argued under similar family purpose trusts that the parent and the child take equal

shares. I would like at this time to reserve the right, after further examining the case law in this respect, to argue either way on this point. Now, coming to the next main issue, as presented by Mr. Latham, it appears that it is his position that if there is a gift in 1950, in the alternative, that gift is the amount which was actually distributed by the estate in 1950 to the trust.

Now, under our approach, we feel that it should be argued, the Court should adopt the position that if there was a transfer, it is a transfer by virtue of this election, that as of the date of that election, the transfer took place. Therefore, the petitioner no longer had any control of any kind whatsoever over the property. So that it makes no difference whether a partial distribution or a total distribution was made in 1950 or at any other time.

The point is that the value must be placed on what [19] she transferred by virtue of her election, and it does not follow that the time of the distribution or the date of the distribution—the time of the distribution or the amount of the distribution has any effect whatsoever on the ultimate determination.

Now, the remaining issue, as we see it, is the question of whether a specific bequest of $35,000 made by the decedent to the widow in Paragraph 3 of the will is an amount which should be charged against his community share or the community property of both, that is, whether $35,000 should come out of his one-half interest or one-half of such amount be charged to the interest of him and

the interest of the widow. We believe this is basically a question of interpretation of the will, and we will argue on brief why we believe that our interpretation under the terms of the will indicate and require a conclusion that that was a bequest coming out of the decedent's one-half share in the community.

Mr. Latham has suggested that we are arguing strongly that inasmuch as the trust is discretionary, it is one for support and maintenance, that the value which the petitioner received was substantially less for that reason. In other words, their interest would be diminished by what was needed for her support and maintenance, I mean the value of the difference between what was received and what was needed for her support and maintenance. We have no evidence with respect to these [20] items, and we have no real basis, I believe, for contention on that point. I can see none.

I think we have everything in the stipulation, your Honor, which is necessary in any computation the Court might have to make, whichever of the theories, either the petitioner's or the respondent's, you ultimately determine is correct.

The Court: Are you ready to present the stipulation?

Mr. Latham: It will be a joint stipulation.

The Court: The stipulation of facts is received in evidence. I suppose there are some exhibits?

Mr. Latham: Just one, your Honor, the will.

The Court: The stipulation is received, together with the exhibit that is attached.

Now, Mr. Latham, we are ready to receive the evidence.

(The documents above referred to were marked for identification as Joint Exhibit 1 and received in evidence.)

[See pages 18-29.]

Mr. Latham: I might add one thing.

The Court: All right, you may.

Mr. Latham: I was interested in Mr. Burke's statement that, to take the position urged by petitioner here would subvert the taxing laws with respect to transfers. It is rather interesting for this reason:

As a matter of common knowledge, I suppose 90 per cent of the wills in California are exactly like this, where the widow, where the widow takes an election, where community property is concerned. And to my knowledge, as a practitioner here for many years, this is the first time that the question [21] of a taxable gift in connection with the exercise of an election has ever been raised. Certainly, there are no court cases on it. It is just a matter of interest that I think——

Mr. Burke: Your Honor, Mr. Latham is correct, with respect to the problem as far as case law is concerned. However, the only authority I have is hearsay, but I have discussed this matter with the head man, as far as the Director's office is concerned, in this type of an arrangement, and he has assured me that this type of arrangement has been held by his office to be a gift and has been taxed, so I have only his statement on that.

Mr. Latham: We have been very fortunate, I guess, in our office.

Mrs. Siegel, will you take the stand.

Whereupon,

MILDRED IRENE SIEGEL

called as a witness for and on behalf of herself, Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Latham): Will you state your name, please? A. Mildred Irene Siegel.

Q. Where do you live?

A. 3278 Wilshire Boulevard. [22]

Q. How long have you lived in that location?

A. Since April 1.

Q. This year? A. Yes.

Q. You are the petitioner in this proceeding before the Tax Court? A. Yes.

Q. You are the widow of the late Irving Siegel?

A. Yes, I am.

Q. When did he pass away?

A. December—January 4, 1949.

Q. What was the cause of his death?

A. Coronary thrombosis.

Q. Was it sudden and unexpected?

A. Yes.

Q. How old was he when he passed away?

A. 47.

Q. And his business at the time of his death?

A. Builder and contractor.

Q. In Los Angeles? A. Yes.

(Testimony of Mildred Irene Siegel.)

Q. How long had he been engaged in that business? A. Oh, for 25 or 30 years.

Q. How long had you been married to Mr. Siegel at the time of his death? [23]

A. 27 years.

Q. Did you reside in California during the entire period of your marriage?

A. All but four years.

Q. Did either of you have any separate property of consequence at the time of your marriage?

A. No.

Q. Either of you acquire any property by gift or inheritance from any third person during the marriage? A. No.

Q. Where did you live at the time of Mr. Siegel's death?

A. 406 South June Street.

Q. Los Angeles? A. Los Angeles.

Q. How long had you resided there?

A. A little over a year.

Q. Do you recall the cost of that home?

A. $62,500.

Q. Were alterations and additions made to the property after you acquired it? A. Yes.

Q. Can you estimate the cost of those additions?

A. I would say around $30,000.

Q. Did the figures you gave me include the cost of the furnishings installed in that residence? [24]

A. No.

Q. Can you estimate the cost of the furnishings installed in that residence?

(Testimony of Mildred Irene Siegel.)

A. Well, the appraised value in 1950 was, the replacement value was $60,000.

Q. You were living in that home, then, on March 31, 1948, the date of Mr. Siegel's will?

A. Yes, sir.

Q. Did you do any entertaining of consequence in your June Street home?

A. Yes, very great deal.

Q. How many in household help did you maintain there at the time of Mr. Siegel's death?

A. We had two people.

Q. Inside help? A. Yes.

Q. Did you also have a gardener who maintained the premises?

A. Yes, we did.

Q. Did you have any other home at the time of Mr. Siegel's death?

A. Yes, I owned a house in Palm Springs.

Q. You or both of you?

A. Both of us.

Q. When was that residence acquired? [25]

A. Four years before Mr. Siegel passed away. It would be 1945.

Q. You recall what the Palm Springs residence cost? A. No, I don't.

Q. How many rooms did the Palm Springs home contain?

A. Six rooms and three baths.

Q. Was that house completely furnished?

A. Yes, it was.

(Testimony of Mildred Irene Siegel.)

Q. How many automobiles did you and Mr. Siegel own at the time of his death?

A. Two.

Q. Do you recall the make of the cars?

A. Yes, they were Cadillacs.

Mr. Latham: Now, it will be stipulated, I believe, for the record that for the calendar year 1947 Mr. and Mrs. Siegel's net income for Federal income tax purposes was $479,422.99, and for the year 1948, $230,300.99. All of the said community was community income. Is that satisfactory?

Mr. Burke: That is correct.

Q. (By Mr. Latham): Do you know approximately how much it cost you and Mr. Siegel to live, excluding income taxes, for the year 1948, the last full year of his death?

A. I don't know, excluding. I know including it was between $45,000 and $50,000. [26]

Mr. Latham: I believe these items have been approved by counsel for the respondent. We offer as Petitioner's Exhibit 1—if you are going to call it that, is that appropriate?

The Clerk: 1-A is what you called this.

The Court: 2, probably.

Mr. Latham: Call this Petitioner's Exhibit 2, a statement of the expenses per ledger from January 1, 1948 to December 31, 1948 of Mr. and Mrs. Siegel.

Mr. Burke: We have no objection to the secondary nature of this. In other words, we agree that this may go in as expenditures. However, we do

(Testimony of Mildred Irene Siegel.)

believe that we have an objection with respect to the materiality of this item in determining the issue before the Court. If Mr. Latham would explain the purpose of this exhibit and this line of questioning, I would appreciate it.

Mr. Latham: Yes. We are endeavoring to show the standard of living which was maintained at the time of death, and the cost thereof.

The Court: Yes.

Mr. Latham: In order that we may be certain that there will be no exclusion or determination that the value of her income, of her right to income, his half, was less than the total, which is part of one of our basic contentions in the case.

The Court: Well, I understand the respondent probably will argue in his brief that this is material, whereas the petitioner's contention is that it is a material fact in the case.

Mr. Latham: Highly material.

The Court: The receipt of the evidence, of course, would not preclude that argument at all, and I would overrule the objection. It will be received as Petitioner's Exhibit No. 2.

(The document above referred to was marked for identification as Petitioner's Exhibit No. 2 and received in evidence.)

[See page 95.]

Q. (By Mr. Latham): I will ask you, Mrs. Siegel, please, to examine that, and in your opinion does that statement, which purports to show the expenditures by you and Mr. Siegel for the calendar

(Testimony of Mildred Irene Siegel.)

year 1948, represent in your opinion the amounts necessary to maintain the standard of living in existence at the time of Mr. Siegel's death?

Mr. Burke: I object to that as calling for her opinion. I believe that should be established by Mrs. Siegel's own testimony as to what was her standard, rather than what was her opinion as a result of these expenditures.

The Court: Well, I will overrule the objection. You may answer the question.

A. Yes. [28]

Q. (By Mr. Latham): Did you and Mr. Siegel have any children? A. An adopted boy.

Q. How old is your son now?

A. He is 12.

Q. At the time of Mr. Siegel's death, he was something under six years of age?

A. He was five and a half.

Q. Now, in referring to Mr. Siegel's will, which is Exhibit 1-A to the joint stipulation, I note that Mr. Weingart and Mr. Allison are named as trustees with you. Will you please state briefly the business and social connection between you and Mr. Siegel and these two gentlemen?

A. Well, Mr. Weingart was associated in business, and also a very close friend, and Mr. Allison was a very close friend of Mr. Siegel's.

Q. Approximately how long had you and Mr. Siegel known these two gentlemen prior to Mr. Siegel's death?

(Testimony of Mildred Irene Siegel.)

A. Well, almost as long as we had lived in California, which was in 1926.

Q. In fact, all your married life together?

A. Yes.

Q. And had Mr. and Mrs. Weingart visited in your home and you in theirs?

A. Yes, yes. [29]

Q. Mr. Weingart was familiar with the way you and Mr. Siegel lived? A. Oh, yes.

Q. And was Mr. Allison, also, if you know?

A. No, Mr. Allison was more Mr. Siegel's friend than mine.

Q. Not a social friend? A. No, no.

Q. You know why Mr. Siegel suggested these gentlemen as trustees with you?

A. Well, I guess he thought they were just about the most capable men he knew to administer his estate and to be trustees of the trust.

Q. After Mr. Siegel's death, did you receive the family allowance of his estate? A. Yes, I did.

Q. Do you recall how much it was?

A. It was $2,000 a month.

Q. And was that amount later changed?

A. Yes, it was raised to three.

Mr. Latham: If Your Honor please, I offer as Petitioner's Exhibit 3, a statement of the cash account of Mildred Siegel for the calendar year 1949, which purports to show all her expenditures and her cash receipts, and subject to Mr. Burke's objection, would like to offer this in evidence [30] as Petitioner's Exhibit 3.

(Testimony of Mildred Irene Siegel.)

Mr. Burke: I would just like the record to show the same objection stands for Exhibit 3 as it did for Exhibit 2.

The Court: Let me see it, Mr. Latham.

Let me understand respondent's objection. Of course, the statement would not prove itself if respondent objects and requires additional evidence as to these items, but if his objection is only as to its materiality, it would be the same as the objection to No. 2.

Mr. Burke: That is correct, Your Honor. In other words, we agree that these amounts were received and expended in this year, and they were for personal——

The Court: As to the correctness, you don't object?

Mr. Burke: That is right.

The Court: What you do object to is their materiality?

Mr. Burke: That is right.

The Court: And on the same ground as stated, for the same reason as stated with reference to Exhibit 2, that objection is overruled without prejudice, of course, for respondent to argue that this is immaterial evidence, which he may do in his brief, of course. The objection is overruled, and it is received as Petitioner's Exhibit No. 3.

(The document above referred to was marked for identification as Petitioner's Exhibit No. 3 and received in evidence.)

[See page 96.] [31]

(Testimony of Mildred Irene Siegel.)

Q. (By Mr. Latham): Mrs. Siegel, showing you Petitioner's Exhibit No. 3, I will ask you if you will examine it, please? A. Yes.

Q. In your opinion, were those expenditures necessary in order for you to maintain the standard of living in effect at the time of Mr. Siegel's death?

A. Yes, sir.

Mr. Latham: I will offer, if Your Honor please, similar statements for the calendar years 1950, '51, '52, '53, and '54, as Petitioner's Exhibits 4, 5, 6, 7, and 8.

The Court: I suppose the respondent's objection is not as to the correctness of these amounts, but as to the materiality of the evidence?

Mr. Burke: Would you allow me to ask Mr. Latham some questions?

The Court: Yes.

(Discussion off the record.)

Mr. Burke: That is correct, Your Honor.

The Court: The objection as to the materiality of the evidence is overruled, and the exhibits are received in evidence as Petitioner's Exhibits Nos. 4, 5, 6, 7, and 8.

(The documents above referred to were marked for identification as Petitioner's Exhibits Nos. 4, 5, 6, 7, and 8 and received in evidence.)

[See pages 97-101.] [32]

Q. (By Mr. Latham): I show you Petitioner's Exhibits 4, 5, 6, 7, and 8, which represent a state-

(Testimony of Mildred Irene Siegel.)

ment of your cash receipts and disbursements for the calendar years 1950 through '54, inclusive.

Did you actually spend those amounts, do you recall, for your living expenses during those years?

A. Yes, sir, I did.

Q. Now, in your opinion, were those amounts necessary, the expenditure of those amounts necessary in order to maintain the standard of living to which you were accustomed at the time of Mr. Siegel's death? A. Yes.

Q. Now, looking into the future a little bit, is it your opinion that substantially these same amounts will be necessary for you to receive in order to maintain this standard of living in the years to come? A. Yes.

Mr. Burke: Same objection to that question, calling for an opinion of the witness, Your Honor.

The Court: The objection is overruled.

Q. (By Mr. Latham): Did you answer the question? A. Yes.

Q. After Mr. Siegel's death, do you recall discussing with the other trustee the amount you should receive from the [33] trust in order to enable you to maintain this standard of living at the date of death? A. Yes.

Q. And was any agreement reached at that time with respect to the amount to be paid you?

A. Yes.

Mr. Latham: If Your Honor please, the stipulation of facts, Joint Exhibit 1, shows that Mrs. Siegel received the following amounts in the following years: 1951, that is—for this testamentary

(Testimony of Mildred Irene Siegel.)

trust, 1951, $54,000; 1952, $54,000; 1953, $52,000; 1954, $48,000.

Q. (By Mr. Latham): Turning now to consideration of Mr. Siegel's will, did he discuss its terms with you prior to his death?

A. No, he did not.

Q. After he passed away, was the will explained to you? A. Yes.

Q. How soon, approximately, after he passed away?

A. Oh, I would say a couple of weeks after he passed away.

Q. And who discussed it with you?

A. Mr. Weingart and Mr. Larson, the attorney.

Q. Who is Mr. Larson?

A. My attorney.

Q. He is the attorney—— [34]

A. Attorney for the trust.

Q. Did you understand your rights under the will? Was that explained to you?

A. Yes, that was.

Q. What did you understand, what was explaided, what did you understand your rights under the will to be?

A. Well, if I took my community half, I was to receive nothing from the other. It would mean that my income would be cut in half, that I would lose.

Q. If you elected to take under the will, what would you get?

A. That I would get the income from the entire estate, from the entire trust.

Q. Did you consider what course of action you

(Testimony of Mildred Irene Siegel.)

should take, so far as your rights under the will were concerned, with anyone?

A. Beg pardon?

Q. Did you consider what course of action to take, discuss it with anyone?

A. Yes, with Mr. Weingart and Mr. Larson and Mr. Allison.

Q. How many times did you discuss it with them prior to the time you exercised the election in writing on January 5, 1950?

A. Oh, many times. [35]

Q. Did you ask Mr. Weingart, your long-time friend, as to what he thought you should do?

A. Yes.

Q. What did he tell you?

A. He told me to take under the will.

Q. Now, in electing to take under the will, did you consider the fact that, among other things, you would have the benefit of the advice of your co-trustees as to investments?

A. Yes, I did.

Q. Did you also consider the fact that, if you took under the will, the entire estate would be under one management instead of being divided in two? A. Yes.

Q. Why did you elect to take under the will?

A. Because I couldn't maintain my standard of living on the income from my half, and I didn't want to lose control of the other half, and the income.

Q. In electing to take under the will, was it

(Testimony of Mildred Irene Siegel.)

your thought at the time that you would be worse, better off, or about the same as if you took your half?

A. Oh, no, I would be very much better off taking under the will.

Q. You thought you made a good deal?

A. Oh, yes, definitely.

Q. Now, when you were considering what course of action [36] you were to follow, did the possibility that you might be making a gift in electing to take under the will ever occur to you or anyone else?

A. No, it didn't.

Q. Was it ever mentioned by anyone?

A. No.

Q. In exercising your election to take under the will, did you intend to make any kind of a gift?

A. No, I did not.

Q. Now, Mrs. Siegel, what is your best estimate as to the annual cost of maintaining your son?

A. Well, it costs me around $4,000 a month to maintain him.

Q. $4,000? A. A month—I mean a year.

Q. Do you, in your opinion—is there any reasonable likelihood that that cost might change materially in the coming years?

A. No, I don't believe so.

Q. Suppose your income were materially reduced, would it, in your opinion, still cost you $4,000 a year to maintain your son? A. No.

(Testimony of Mildred Irene Siegel.)

Q. In other words, you could do it cheaper if it were necessary? [37] A. Yes.

Mr. Latham: I think that is all, your Honor.

The Court: All right.

Cross Examination

Q. (By Mr. Burke): Mrs. Siegel, the Palm Springs property has been sold, hasn't it?

A. Yes.

Q. When was that sold?

A. That was sold shortly after Mr. Siegel's death.

Q. Now, what is the nature of the property, your understanding of the property that is actually in your trust now? What kind of property? What does it consist mainly of?

A. Mostly of income apartments.

Q. Apartments? A. Yes.

Q. Who manages those apartments?

A. The Consolidated Hotels.

Q. That is a corporation? A. Yes, sir.

Q. You as trustee with Mr. Weingart and Mr. Allison, receive the net income from that——

A. Yes.

Q. ——operation? A. Yes. [38]

Q. All right. What investments has the trust, you and Mr. Allison, Mr. Weingart, made since the formation of the trust, other than the receipt of income from these apartments which are managed by the corporation?

(Testimony of Mildred Irene Siegel.)

A. Well, we have bought stocks and first mortgages.

Q. To what extent, how much, in proportion to the total property in there, about what percentage would be devoted to this type of security?

A. I can't say.

Q. You have no idea? A. No.

Q. Now, in your discussions as to what would happen to your interest if you did not elect to take under the will, I understand you had many of those? A. Yes, sir.

Q. Did Mr. Weingart or anyone connected with the management corporation tell you that you would have to sell your interest in that property if it wasn't consolidated under one management?

A. Well, I would have to be liquidated.

Q. The whole interest in this real estate would have to be liquidated?

A. Well, some of it would have had to be in order to divide——

Q. Would you explain that to me? [39]

A. Well, there couldn't have been just an exact division without some liquidation.

Q. I don't mean that. You have, for example, the major portion of the assets in this estate consist of small fractional interests in real property. Now, that property is managed by a corporation?

A. That's right.

Q. Now, you would receive a fractional interest, as a beneficiary under the trust, and that is the way it is managed now, is that correct?

(Testimony of Mildred Irene Siegel.)

A. That's correct.

Q. Did anyone ever tell you that that couldn't be done if you didn't take under the will; you would still have the same fractional interests, be reduced, further reduced? Was there anyone—did anyone ever tell you that you couldn't do that?

A. No.

Q. When was it explained to you what would happen under the will if you took your election, was it explained to you that your son would then be vested with a substantial interest that he would not otherwise have?

A. I don't understand.

Q. Did you understand, when your election was being explained to you, did you fully understand at that time that, by virtue of your election, your son would then and there get a [40] vested interest, an interest in your property that he didn't have before?

A. That wasn't certain, because I had the right to invade the trust, the corporacy of the trust.

Q. That is what I mean. I am asking you was that explained to you?

A. He might not have gotten anything. I mean if I had——

Q. That's right. Was it explained to you?

A. Yes.

Q. Fully? In other words, you understood that your son was to take something under this will by virtue of your election?

(Testimony of Mildred Irene Siegel.)

A. Well, not a gift, certainly.

Q. Now, Mrs. Siegel, in other words, there's approximately a million dollars in this estate. There are several hundred thousand dollars worth of expenditures. There is an interest approximately in round figures, maybe several, about six or seven hundred thousand dollars going into a trust. Under the operation of that trust, after you die, your son is to get everything that is in that. Didn't you understand that to be the case? A. Yes.

Q. Looking at these Exhibits 2, 3, 4, 5, 6, 7, and 8, practically all of these are identified except personal expenses other than the above. Could you look through those and, [41] one by one, looking at Exhibit 2, first, which I hand you, give us some idea, if you can remember, for example, in 1948, why that particular item designated "Personal expenses other than the above," is so high, and what the nature of those would be?

A. Well, the help and my clothes and—let's see, which year was this?

Mr. Latham: Will you speak up, please?

The Witness: It was the help, the gardening, the maintenance of the home.

Q. (By Mr. Burke): Are those the elements that go into that? Would there be anything else? '48, that is prior to your husband's death.

A. And entertaining, we did a very great deal of entertaining.

Q. What portion would you estimate would be apportionable to entertaining?

(Testimony of Mildred Irene Siegel.)

A. I couldn't say without looking at the books.

Q. Would that be the same situation with respect to 1949, for example, listed as "personal" on Exhibit 3, with respect to 1949, $10,170; is that the same type of——

A. No, because that was the year after Mr. Siegel passed away, and I didn't do very much entertaining.

Q. During these years, '49, '50, '51, '52, '53, '54, [42] covered by these exhibits, did your son reside with you? A. No, he was in boarding school.

Q. Does the cost set out with respect to him include the full cost of these schools?

A. Yes, sir.

Q. And how long during the year would he be in school? A. Nine months.

Q. Was he with you with respect to the remaining three months of the year? A. Yes.

Q. He resided——

A. Maybe a few weeks in camp.

Q. So then he would be living with you during the remaining three months? A. Yes.

Q. Now, I believe you gave a statement to Mr. Latham as to what it cost you to support your son, and how much you could reduce that. How about that as applied to your own living? Could you venture an estimate of how much you could get along yourself with if your income were reduced?

A. Well, I haven't any idea.

Q. Clothing? A. If I were compelled to.

Mr. Burke: Thank you very much. That is all.

Mr. Latham: That is all, Mrs. Siegel. [43]

The Court: All right, Mrs. Siegel.

(Witness excused.)

Whereupon,

BEN WEINGART

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Latham): Will you state your name, please? A. Ben Weingart.

Q. And your address?

A. 228 South Hudson Street.

Q. Los Angeles? A. Los Angeles.

Q. Your occupation?

A. Building, real estate, general business.

Q. How long have you been engaged in that business, businesses in Los Angeles?

A. 35, 40 years.

Q. You are one of the trustees named in the last will of Mr. Irving Siegel, deceased? A. I am.

Q. How long had you known Mr. Siegel in his lifetime? A. About 20 years.

Q. And did you have any other business association with [44] him?

A. Yes, we associated together, partners, equal partners.

Q. And you were at the time of his death?

A. Was.

Q. Had you and Mrs. Weingart had an occasion to visit socially with the Siegels and they with you?

(Testimony of Ben Weingart.)

A. Yes, many times.

Q. At the time of his death, you had been in their home and with them and were familiar with the way they lived? A. I was.

Q. Did Mr. Siegel discuss the terms of his will with you prior to his death? A. He did.

Q. Briefly, what did he tell you?

A. He told me that—we discussed it on several different times and spoke back and forth in reference to it, and he asked me my advice. And I made some suggestions to him in regard to it, and one of the results of the will was somewhat of my suggestion, with reference to the boy getting anything until he was of age, and the method that he should write up the will. He had some of his own ideas, and after he made the will, why, he asked me to go on as executor, and I suggested that he should get someone else, also, which he did; and this will was the result of conversations with him, I believe.

Q. After his death, did you discuss with Mrs. Siegel [45] her rights under the will?

A. I did, a number of occasions.

Q. Did you explain to her her rights as you understood them? A. I did.

Q. In your opinion, was she fully familiar with her various rights under the will?

A. I believe she was.

Q. That was true at the time she exercised her election? A. Correct.

Q. Prior to the exercise of that election, did she ask you what you thought she should do?

(Testimony of Ben Weingart.)

A. She certainly did, not only once but several times.

Q. What did you tell her?

A. I told her by all means that she should elect the right to take the whole.

Q. Now, did you tell her why?

A. I told her that if she did not take the whole, that two things would happen. One of them is that I don't believe that her income would be large enough out of her half for her to live the way she was living. And another thing, that I would be on the other side of the fence, in a judicial capacity of being an executor of the boy, under that side of the will, and I would be against her on—her side, in other words.

Q. If she took her half out? [46]

A. If she took her half out, I would take the postion of being on the other side and looking after the boy's interests.

Q. You mentioned the whole, she should take the whole? A. Well——

Q. What do you mean by that?

A. That means that she should take the selection of using the entire estate for her lifetime, and the income from that estate, which I believe that the income of that estate would be enough to support her and the boy under the terms of the will, and in my opinion that I didn't believe that she should have to go into the principal of the will, principal of the estate.

Q. If she elected to take under the will?

(Testimony of Ben Weingart.)

A. That's right.

Q. What was your opinion as to whether or not she would have to invade principal if she took out her half?

A. If she took out her half, she would have to then go——

Mr. Burke: Your Honor, I believe that calls for an opinion of what might happen in the event of certain facts within the contemplation of Mrs. Siegel, rather than Mr. Weingart. I don't believe it is a proper question. I object.

The Court: He has been permitted to testify what advice was given.

What is the question, please, that is now pending? [47]

(Question read.)

The Court: Well, I will overrule the objection.

A. (Continuing) And use some of her estate for the purpose of supporting herself and the boy in the proper manner that she has been doing.

Q. (By Mr. Latham): You pointed that out to her, in considering what she should do?

A. Correct.

Q. Mr. Weingart, I notice that the evidence here shows that during 1951, '52, '53, and '54, Mrs. Siegel received from the trust an average of $52,000 per year. Did you, as one of the trustees, determine the amount to be distributed to her in each one of those years?

A. I did. I discussed it with Mr. Allison, and I discussed it with Mrs. Siegel, and she said she

(Testimony of Ben Weingart.)

would have to have more money, that after she had paid her income tax that she wouldn't have enough. And after checking with her and talking to her several times, we decided that she should have more, and we gave it to her, because the income of the estate, if I recall, was enough to give her this amount without going into the principal of the estate.

Q. Was it your opinion——

A. My opinion that that amount was about what she was spending, to keep up with conditions changing and prices were [48] going up.

Q. As one of the trustees, did you determine that those amounts were necessary in order for her to maintain the standard of living to which she was accustomed at the time of the date of her husband's death?

A. I will state this: I knew Irving Siegel very well, and I took this position, that if he were here he would instruct me to give her that amount of money, and that's the position I took. I felt it was the right thing to do.

Q. And in accordance with your judgment in accordance with the terms of the will?

A. That's correct.

Mr. Latham: I think that is all.

The Court: All right.

Cross Examination

Q. (By Mr. Burke): When you and Mr. Allison and Mrs. Siegel came to discuss what would be

(Testimony of Ben Weingart.)

necessary for her support in a given year, what were the actual steps that transpired in reaching that determination?

A. I had talked with Mrs. Siegel several times, and I telephoned to Mr. Allison and discussed the matter over the phone with him.

Q. I see.

A. Mrs. Siegel, I talked to her personally several times, [49] went to her house, and also over the telephone.

Q. What would she say in those situations?

A. She'd say, "Well, my expenses are up," and she says, "I just don't have anything at all left." She says, "I will have to take money out of my own account to support myself."

She made those statements, so I felt it was only fair.

Mr. Burke: Thank you very much. That is all.

Mr. Latham: That is all.

The Court: That is all, Mr. Weingart.

(Witness excused.)

Mr. Latham: If your Honor please, that is the petitioner's case, and the petitioner rests.

Mr. Burke: The respondent has no witnesses, your Honor, and the respondent rests.

The Court: Very well, the documents are all in, and your stipulation.

What length of time would you gentlemen like to have for any briefs in this case?

Mr. Latham: So far as the petitioner is concerned, we can do it within 30 days after we get the transcript.

Mr. Burke: I have some other pressing problems.

Mr. Latham: You have no other cases, have you, Mr. Burke?

Mr. Burke: There, again, Mr. Latham is telling me what is going on in my office. But I would like, as long as [50] possible, commensurate with the burden that the Court now has on its hands.

The Court: Yes, well, we have of course quite a number of cases submitted ahead of this. It would be several months before we could expect to reach this case in the ordinary procedure, and in the case we tried this morning, I allowed until September 1st for filing of briefs. Of course, you can file them sooner if you get them ready.

Mr. Latham: If you are going to set a date ahead for the respondent, we might as well take—I would like to get the case briefed as soon as possible.

The Court: You can file it at any time, Mr. Latham.

Mr. Latham: Do you want simultaneous briefs?

The Court: Yes, I suppose so. There is no reason it should be otherwise, is there? You have stipulated all the facts. Or do you want——

Mr. Burke: It really makes no difference to me, your Honor. I think simultaneous briefs would be perfectly all right.

Mr. Latham: It is all right with me.

The Court: You could choose what they call seriatim briefs, which would mean the petitioner would file first and then the respondent would have

30 days after that. Which method would you like to use?

Mr. Latham: It doesn't make any difference to me, as [51] far as that is concerned. We can file simultaneous briefs.

The Court: I imagine in this case, where the facts are all stipulated, it is more a question of law, I think, probably than anything else, probably simultaneous briefs, and then with the right, of course, to reply, each one to file a reply brief.

Mr. Burke: That will be perfectly all right with the respondent, your Honor.

The Court: Well——

Mr. Latham: September 1st?

The Court: September 1st you desire?

Mr. Burke: I would like September 1st.

The Court: Well, it wouldn't delay the Court, I know that, because of cases submitted elsewhere, it would certainly be several months before we could reach this in the ordinary course. So there would be no delay by giving you until September 1st, so you are granted until September 1st in which to file your briefs.

Would you like 20 days or 30 days in which to file your reply briefs?

Mr. Latham: I can do it in 20 days. If Mr. Burke wants 30, we certainly won't object.

Mr. Burke: I think I will probably file a reply in this case. I am not sure. The way it looks now, I probably will. We need five days for review, probably 30 days would be [52] better.

The Court: I guess that is better, because fre-

quently if we make it the shorter time we have to have motions for extensions, and knowing as the Court does know, it will be several months before we can expect to reach this case, and that will not delay it. So September 30, 1955 is fixed as the time for the filing of reply briefs.

Mr. Latham: Thank you.

Mr. Burke: Thank you.

(Whereupon, at 3:20 p.m., the hearing was closed.) [53]

[Endorsed]: T.C.U.S. Filed July 15, 1955.

PETITIONER'S EXHIBIT No. 2

IRVING SIEGEL and MILDRED SIEGEL

EXPENSES FROM JAN. 1, 1948 to DEC. 31, 1948

(As per Ledger)

Cadillac automobile	$	5,173.72
Insurance—Life and residence		2,224.45
Medical		3,887.00
Contributions to charity		127.00
Tax analysis		302.79
R. E. taxes and assessments on two residences and pers. prop. taxes		1,789.71
State and City sales tax		294.60
Personal expenses other than above		32,339.59
Interest on mortgage on Palm Springs residence		412.63
	$	46,551.49 S
Director of Internal Revenue—balance 1947 tax and on acct. 1948	$	145,572.70
Franchise Tax Board—1947 tax		23,296.38
Total	$	215,420.57 *

PETITIONER'S EXHIBIT No. 3

MILDRED SIEGEL

CASH ACCOUNT FOR 1949

EXPENDITURES:		
Automibile expense		$ 370.98
Contributions to charity		490.00
Insurance—Life, prop, compre, W. C.		1,306.70
Personal		10,170.10
Medical		442.21
For son—Clothes		141.85
Medical		1,187.33
School		372.50
Household employees		4,270.43
Food, etc.		2,728.61
Utilities		869.87
Gardener, maintenance and repairs		942.87
R. E. taxes and assessments		809.55
Total		$ 24,103.00 *
Allowance from the Estates		$ 27,333.33
Deposited in Savings Account		833.33 –
		$ 26,500.00 S
New England Mut Life Ins—dividend		143.55
Bullock's—refund on furniture		396.19
		$ 27,039.74 S
Balance on hand Jan. 4, 1949	$7,150.46	
Less check to Louis Boyar	5,000.00	
		$ 2,150.46
Total expenditures in 1949		24,103.00 –
Balance on hand December 31, 1949		$ 5,087.20 *

PETITIONER'S EXHIBIT No. 4

MILDRED SIEGEL

CASH ACCOUNT FOR 1950

EXPENDITURES:		
Deposit on new automobile		$ 250.00
Automobile expense		929.00
Contributions to charity		682.00
Insurance—Life, auto, compre, W. C.		531.41
Personal		12,403.86
Medical		626.29
For son—Clothes		354.49
Medical		125.77
School, etc.		2,142.97
Household employees		3,720.96
Food		2,221.32
Utilities		1,065.99
Gardener, maintenance and repairs		797.05
R. E. taxes and assessments		1,369.21
Federal income tax		4,500.00
Total		$ 31,720.32 *
Allowance from the Estate	$ 18,000.00	
Distribution from the Trust	24,000.00	$ 42,000.00
Deposited in Savings Account		3,500.0 –
Invested in U. S. Savings Bonds		575.00 –
		$ 37,925.00 S
Balance on hand Jan. 1, 1950		5,087.20
Total expenditures in 1950		31,720.32 –
Balance on hand December 31, 1950		$ 11,291.88 *

PETITIONER'S EXHIBIT No. 5

MILDRED SIEGEL

CASH ACCOUNT FOR 1951

EXPENDITURES:	
Furniture	$ 250.00
Automobile (balance cost)	4,142.26
Automobile expense	468.63
Contributions to charity	385.00
Insurance—Life, auto, compre, W. C.	993.91
Personal	13,689.25
Medical	583.13
For son—Clothes	112.95
Medical	74.77
Schools, camp	1,303.77
Household employees	3,250.00
Food	1,542.23
Utilities	1,009.11
Gardener, maintenance and repairs	1,258.96
Tax consultant—fee	1,500.00
R. E. taxes and assessments	1,354.38
Federal income tax	17.607.63
State income tax	916.60
F.I.C. on household employees	19.53
Total	$ 50,462.11 *
Distribution from the Trust	$ 54,000.00
Deposited in Savings Account	7,100.00 –
Loans Receivable	100.00 –
	$ 46,800.00 S
Balance on hand Jan. 1, 1951	11,291.88
Total expenditures in 1951	50,462.11 –
Balance on hand December 31, 1951	$ 7,629.77 *

PETITIONER'S EXHIBIT No. 6

MILDRED SIEGEL

CASH ACCOUNT FOR 1952

EXPENDITURES:	
Furniture	$ 121.54
Auto expense	322.57
Contributions to charity	325.00
Insurance—Life, auto, prop. compre, W. C.	981.49
Personal	8,275.23
Medical	484.73
For son—Clothes	229.05
Medical	106.50
School, camp	2,062.11
Household employees	3,917.50
Food	1,269.40
Utilities	993.18
Gardener, maintenance and repairs	1,943.61
R. E. and pers prop taxes, assessments, auto license	1,922.55
Federal income tax	19,139.51
State income tax	1,157.32
F.I.C. on household employees	62.31
Total	$ 43,313.60 *
Distribution from the Trust	$ 54,000.00
Deposited in Savings Account	14,000.00 –
Invested in stock	500.00 –
	$ 39,500.00 S
Social Security survivors ins.	100.00
Balance on hand Jan. 1, 1952	7,629.77
Total expenditures in 1952	43,313.60 –
Balance on hand December 31, 1952	$ 3,916.17 *

PETITIONER'S EXHIBIT No. 7

MILDRED SIEGEL

CASH ACCOUNT FOR 1953

EXPENDITURES:		
1953 Cadillac automobile	$ 5,409.81	
Rec'd for 1951 Cadillac	1,850.00	–
Net	3,559.81	S
Television set	310.00	
Automobile expense	291.94	
Contributions to charity	185.00	
Insurance—Life, prop, compre, W. C.	1,013.74	
Personal expenses	6,982.20	
Medical	599.84	
For son—Clothes	194.17	
Medical	175.00	
School and camp	2,401.88	
Household employees	4,672.50	
Food, etc.	1,131.30	
Utilities	970.07	
Gardener, maintenance and repairs	2,376.98	
Accounting fees	1,634.17	
R. E. and pers prop taxes, assessments, auto license, etc.	1,682.21	
Federal income tax	17,079.99	
State income tax	1,333.07	
F.I.C. on household employees	62.92	
Total	$ 46,656.79	*
Distribution from Trust	$ 52,000.00	
Less deposited in Savings Account	4,012.22	–
Balance	$ 47,987.78	S
Cash on hand January 1, 1953	3,916.17	
Total expenditures in 1953	46,656.79	–
Balance on hand December 31. 1953	5,247.16	*

PETITIONER'S EXHIBIT No. 8

MILDRED SIEGEL

CASH ACCOUNT FOR 1954

EXPENDITURES:	
Automibile expense	$ 288.20
Contributions to charity	355.00
Insurance—Life, prop, compre, W. C.	892.23
Personal expense	8,329.39
Medical	494.39
For son—Clothes	174.05
Medical	93.50
School and camp	3,450.62
Household employees	4,681.41
Food, etc.	1,606.95
Utilities	905.21
Gardener, maintenance and repairs	1,839.57
Accounting fee	250.00
Prop. and pers prop taxes, assessments, auto license, etc.	1,496.61
Federal income tax	21,065.73
State income tax	1,263.66
F.I.C. on household employees	81.46
Total	$ 47,267.98 *
Distribution from Trust	$ 48,000.00
Less deposited in Savings Account	4,000.00 –
Less invested in State of Israel Bond	100.00 –
Balance	$ 43,900.00 S
Cash on hand January 1, 1954	5,247.16
Total expenditures in 1954	47,267.98 –
Balance on hand December 31, 1954	$ 1,879.18 *

[Endorsed]: No. 15432. United States Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Mildred Irene Siegel, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed: February 11, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15432

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

MILDRED IRENE SIEGEL, Respondent.

STATEMENT OF POINTS AND DESIGNATION OF RECORD

Comes Now the petitioner on review herein, and pursuant to the provisions of Rule 17(6) of this Court, adopts the Statement of Points and the Designation of Contents of Record on Review as the same appear in the certified typewritten transcript of record in the above cause.

/s/ CHARLES K. RICE,
Assistant Attorney General

[Endorsed]: Filed February 28, 1957. Paul P. O'Brien, Clerk.